S. Hrg. 101-194 Pt. 2C

REPORT OF THE SENATE IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS

HEARINGS

BEFORE THE

SENATE IMPEACHMENT TRIAL COMMITTEE

UNITED STATES SENATE

ONE HUNDRED FIRST SESSION

FIRST SESSION

ON

THE ARTICLES OF IMPEACHMENT AGAINST JUDGE ALCEE L. HASTINGS, A JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FOR HIGH CRIMES AND MISDEMEANORS

MISCELLANEOUS MATERIAL RELATED TO THE EVIDENTIARY HEARINGS

Part 2C of 3 Parts

U.S. GOVERNMENT PRINTING OFFICE
21-732 WASHINGTON : 1989

S961-8

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IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

STATEMENT BY THE HOUSE MANAGERS OF FACTS PROVEN DURING THE HEARINGS OF THE SENATE IMPEACHMENT TRIAL COMMITTEE

Pursuant to the August 3, 1989, directive of the Senate Impeachment Trial Committee, the House Managers submit the following statement of facts which, in the view of the House, were proven during the impeachment trial of Judge Alcee L. Hastings. The facts are divided into two categories: undisputed and disputed facts. Each proposed fact is supported by a citation to testimony, exhibits and/or stipulations admitted into evidence during the hearings held by the Senate Impeachment Trial Committee.

Facts which may be in dispute are preceded by an asterisk (*). The asterisk does not necessarily indicate that there is contrary evidence in the record. In fact, the House believes that often no contrary evidence has been submitted by Respondent with respect to the "disputed" fact. However, because Respondent has suggested through argument that he disputes that the particular fact has been proven, an asterisk has been inserted.

The facts with regard to the bribery conspiracy and the wiretap disclosure, are presented separately. Facts relating to Article XVI, the wiretap disclosure, are presented at the conclusion of the submission.

ARTICLES OF IMPEACHMENT I THROUGH XV AND XVII

1. Judge Alcee L. Hastings was appointed to a state judgeship by Gov. Reuben Askew in 1977.

Testimony of Judge Hastings at 3069.

2. Judge Hastings had no particular ambition to become a judge. He sought his state judgeship in order to obtain more financial security.

Testimony of Judge Hastings at 3070-1.

3. Judge Hastings was appointed to the federal bench by President Carter in 1979.

Testimony of Judge Hastings at 3072.

4. William Borders played a significant role in Judge Hastings' appointment to the federal bench.

Testimony of Judge Hastings at 3360.

5. Alcee L. Hastings was sworn in as a United States District Judge for the Southern District of Florida in October of 1979.

Testimony of Judge Hastings at 3078.

6. William Borders participated in Judge Hastings' federal investiture ceremony.

Stipulation 2.

7. William Borders was the president of the National Bar Association from July 1980 to July 1981. He was not president of the National Bar Association in 1979 when he participated in Judge Hastings' investiture ceremony.

Testimony of Judge Hastings at 3358-59, 3631.

8. In 1981, William Borders was an attorney practicing in Washington D.C.

Stipulation 3.

9. As of January 1981, Judge Hastings and William Borders had known each other for at least eleven or twelve years.

Stipulation 4.
Testimony of Judge Hastings at 3578.

10. As of January 1981, Judge Hastings and William Borders had a long standing personal and professional relationship, stemming, in part, from their active roles in the National Bar Association, an association of black attorneys.

Stipulation 5.

11. The criminal case of United States v. Romano, Crim. No. 78-364, was assigned to Judge Hastings on October 24, 1979.

Stipulation 6.

12. The Romano case was based on a 21-count indictment of two brothers, Thomas and Frank Romano. The charges against the defendants included conducting an enterprise through a pattern of racketeering activity, investing racketeering income in a legitimate enterprise, theft and embezzlement from an employees benefit plan, wire fraud, mail fraud and income tax evasion. The charges were brought under the Racketeer Influenced and Corrupt Organizations statute ["RICO"] which required, under certain circumstances, the forfeiture of property illegally obtained.

Stipulation 7

13. The Organized Crime Strike Force is a prosecuting team under the Organized Crime Section of the Department of Justice. The Strike Force investigates and prosecutes organized crime labor racketeers.

Testimony of James Deichert at 53.

14. James Deichert, of the Organized Crime Strike Force in Atlanta, Georgia, handled the prosecution of United States v. Romano.

Testimony of James Deichert at 53.

15. In December 1980, Thomas and Frank Romano were tried by a jury with Judge Hastings presiding.

Stipulation 8.

16. On December 23, 1980, Thomas and Frank Romano were convicted on all 21 counts by the jury.

Testimony of James Deichert at 57.
House Exhibit 2.

17. During the course of the Romano trial a proffer was made to Judge Hastings that Thomas and Frank Romano had a history of paying bribes and kickbacks.

Testimony of James Deichert at 57-60.
Testimony of Judge Hastings at 3375.

18. During the course of the Romano trial, Judge Hastings heard evidence indicating that the Romanos had access to large sums of cash.

Testimony of James Deichert at 60-61.
Testimony of Judge Hastings at 3375.

19. During the course of the Romano trial, evidence was presented that the Romano brothers had embezzled more than $1,000,000 from an employees benefit plan.

Testimony of James Deichert at 60.

20. The money that was stolen by the Romanos was never found.

Testimony of Judge Hastings at 3376.

21. Following the conviction of Thomas and Frank Romano, Judge Hastings held hearings on December 30, 1980 and February 20, 1981 to determine whether certain financial interests of the Romanos should be forfeited under RICO.

Stipulation 12.

22. Thomas and Frank Romano waived their right to a jury trial on the forfeiture matter.

Stipulation 11.

23. On February 17, 1981, Neal Sonnett entered his appearance on behalf of Thomas and Frank Romano as additional counsel in the case then pending before Judge Hastings.

Stipulation 13.

24. On February 20, 1981, Judge Hastings reserved ruling on the forfeiture in the Romano case, requested that the parties make further submissions and stated that he would schedule the sentencing after he had received the submissions by the parties and the presentence investigation reports.

Stipulation 14.

25. On February 20, 1981, at 7:30 a.m., a call was placed from Judge Hastings' home telephone number (305-731-8176) to William Borders' home telephone number (202-398-6321). The call lasted three minutes.

Stipulation 269.

26. In 1981, William Dredge operated an antique store in North Miami, Florida. He was a career criminal, with a lengthy history of arrests.

Testimony of William Murphy at 531.

*27. William Dredge met William Borders through Joseph Nesline. Nesline was a Washington, D.C. gambling figure.

Testimony of William Dredge at 141-143, 348.

28. From March 5, 1981, to March 8, 1981, William Dredge visited the Washington, D.C. area.

House Exhibits 12 and 13.

*29. Three or four days after his March 5-8, 1981 visit to the Washington, D.C. area, William Dredge returned to the Washington, D.C. area and, during that visit, saw William Borders.

Testimony of William Dredge at 143.

*30. When William Dredge saw William Borders in Washington, D.C., in March, 1981, Borders asked Dredge if he knew the Romanos. Dredge replied that he did not know them. Borders then asked Dredge to inquire into whether the Romanos were "stand up" people. Dredge agreed to make the inquiry.

Testimony of William Dredge at 144.

*31. William Borders obtained William Dredge's phone number from Joseph Nesline some time during the first ten days of April, 1981.

Testimony of William Dredge at 334.

32. William Dredge's phone number is written in William Borders' 1981 appointment book on the pages covering the week of March 30 - April 5, 1981.

Testimony of William Murphy at 631-632.
Testimony of William Dredge at 310-311.
House Exhibit 67.

33. In 1981, William Dredge was known as "Billy" by William Borders and others.

Testimony of William Dredge at 311.

34. In 1981, the telephone number (305) 945-9939, which was subscribed under the name Howard Schlosser, was the home phone number of William Dredge.

Testimony of William Dredge at 157.
House Exhibit 10.

35. In 1981, the telephone number (305) 841-0737, which was subscribed under the name "Bill's Place," an antique store, was the business phone of William Dredge.

Testimony of William Dredge at 156-157.
House Exhibit 11.

*36. In response to William Borders' request, William Dredge contacted Willie Dara, who told Dredge that the Romano brothers were trustworthy people in the underworld, they were part of the Genovese crime family from Chicago, and they had a pending court case.

Testimony of William Dredge at 145-146.

*37. After he spoke to Willie Dara, William Dredge was contacted by William Borders on the telephone and, at that time, Dredge conveyed to Borders the information that he had learned from Dara about the Romanos.

Testimony of William Dredge at 146-147.

*38. After William Borders learned the information about the Romano brothers from William Dredge, Borders asked Dredge to contact the Romanos and tell them that there was an attorney in Washington, D.C. who could help them with their pending court case.

Testimony of William Dredge at 147.

39. William Dredge knew that William Borders had been appointed by President Carter to a position involving the appointment of judges.

Testimony of William Dredge at 227.

*40. Based on William Borders' request that he contact the Romanos in order to tell them that there was an attorney in Washington, D.C. who could help them, William Dredge called Willie Dara and asked him to set up an appointment with the Romanos.

Testimony of William Dredge at 149.

*41. William Dredge asked Willie Dara to set up an appointment with the Romanos during the first week or ten days of April, 1981.

Testimony of William Dredge at 149.

*42. After William Dredge asked Willie Dara to set up an appointment with the Romanos, Dredge received a call from Dara who told him that the Romano brothers were out-of-town, but that Dredge could meet their manager, named "Brother."

Testimony of William Dredge at 149.

43. From April 7, 1981 to April 11, 1981, Thomas and Frank Romano were in California, staying at the Beverly Hills Hotel.

House Exhibit 26.
Testimony of Neal Sonnett at 369-370, 421.

*44. The meeting between William Dredge and "Brother" took place some time before April 8 or 9, 1981, at a paint and body shop on Pembroke Road in South Florida.

Testimony of William Dredge at 151.
Testimony of Neal Sonnett at 421.

*45. At the meeting between William Dredge and "Brother," Dredge told "Brother" that he was an emissary for an attorney in Washington, D.C. who could help the Romanos with their court case. Dredge told "Brother" that if the Romanos were interested they could reach Dredge through Willie Dara.

Testimony of William Dredge at 151.
Testimony of Neal Sonnett at 421-422.

*46. William Dredge never heard back from "Brother" regarding the information that there was a Washington, D.C. attorney who could help the Romanos with their pending court case.

Testimony of William Dredge at 151.

*47. William Dredge never had any direct contact with Thomas or Frank Romano.

Testimony of William Dredge at 152.

*48. On April 8 or 9, 1981, the Romanos received a call from Philip "Brother" Moscato who informed them that he had been told about a Washington, D.C. "bigshot" who could help the Romanos with their pending court case through the judge.

Testimony of Neal Sonnett at 421.

49. On April 8, 1981, the defendants and the Government had filed memoranda on the forfeiture issue in the Romano case.

Stipulation 271.

50. On April 9, 1981, at approximately 10:40 a.m., Judge Hastings called William Borders' office. He left a message for William Borders to call. The message read: "at office between 12 and 1."

Stipulation 272.

51. On April 9, 1981, at 12:15 p.m., a call was placed from a pay telephone in the corridor of the third floor of the federal courthouse in Miami, Florida, near Judge Hastings' chambers, to a pay telephone in the lobby of the federal courthouse in Washington, D.C. The call lasted one minute or less and was charged to Judge Hastings' home phone number.

House Exhibits 31i, 198, 200, 200a, 201, and 222.
Testimony of Wayne McDonald at 849-852.

52. Judge Hastings does not deny that he made the pay phone to pay phone call charged to his home phone on April 9, 1981.

Testimony of Judge Hastings at 3372.

53. A pay phone to pay phone call (as opposed to a pay phone call to an office or residence) would have to be prearranged.

Testimony of Judge Hastings at 3372-73.

54. The April 9, 1981, pay phone to pay phone call might have been the result of instructions by William Borders that Judge Hastings go out and call Borders back from a pay phone.

Testimony of Judge Hastings at 3373, 3503.

55. There is ample evidence, including recorded conversations, of other instances when William Borders has requested persons with whom he is speaking to go out to a pay phone and call him back.

Exhibits 46a and b.
Exhibits 58a and b.
Testimony of William Dredge at 247, 312.

56. On April 9, 1981, the pay telephone used for the 12:15 p.m. call charged to Judge Hastings' home phone number, was located approximately 125 feet from Judge Hastings' chambers.

House Exhibit 201.
Testimony of Wayne McDonald at 850.

57. In 1981, there were at least four telephones in Judge Hastings' chambers: one in his personal office; one on the desk of Judge Hastings' secretary, Betty Williams; one on the desk of Judge Hastings' courtroom deputy, Marilyn Carter; and one in the area where the law clerks worked. Each of these telephones had access to the Federal Telecommunications System (FTS), which was to be used for long-distance telephone calls whenever possible.

Testimony of Betty Williams at 2712, 2740.
Testimony of Marilyn Carter at 2781.

58. There is no evidence that the phone system in Judge Hastings' chambers was not working on April 9, 1981. Indeed there are records of other long distance calls made on that day from his chambers.

Testimony of Judge Hastings at 3088-89, 3372.
House Exhibit 195.

59. Judge Hastings never authorized his secretary or any other member of his staff to charge long-distance telephone calls to his home phone number.

Testimony of Betty Williams at 2745.

60. In 1981, in Judge Hastings' chambers, there was a door that led directly from Judge Hastings' personal office to the outside hall corridor. Judge Hastings could exit his chambers without being seen by a member of his staff.

Testimony of Betty Williams at 2746.

*61. On April 13, 1981, Thomas and Frank Romano telephoned their attorney Neal Sonnett and informed him of the offer of help from a Washington, D.C. "bigshot" which they had received through Philip "Brother" Moscato.

Testimony of Neal Sonnett at 417-418, 421-422.
House Exhibits 25 and 26.

*62. On April 16, 1981, Thomas and Frank Romano telephoned their attorney Neal Sonnett and informed him that they believed the offer of help from a Washington, D.C. "bigshot" was a set up by Philip "Brother" Moscato.

Testimony of Neal Sonnett at 423.
House Exhibit 25.

*63. Thomas and Frank Romano did not pursue the offer of help from a Washington, D.C. "bigshot" and conveyed their decision to Philip "Brother" Moscato.

Testimony of Neal Sonnett at 423.

*64. Some time after his meeting with "Brother," William Dredge spoke to William Borders. At that time, Borders told Dredge that he could help the Romanos with their case because the judge who was handling the Romano case was a friend. William Borders said that he could do things with the judge.

Testimony of William Dredge at 153.

*65. William Dredge and William Borders worked out a system by which they communicated about the Romanos by using pay telephones.

Testimony of William Dredge at 155-156.

*66. Most of the telephone calls from William Dredge to William Borders were made in response to a call from Borders. Borders would tell Dredge to go to a pay phone and call him back. Dredge would do so. Most of the calls from Dredge to Borders were made from a pay phone.

Testimony of William Dredge at 247, 312.

*67. William Borders would call William Dredge and ask if Dredge had spoken with the Romanos and whether the Romanos were willing to do business. Borders told Dredge that the Romano case was pending before Judge Alcee Hastings and he could help the Romanos through the judge.

Testimony of William Dredge at 158.

*68. In response to William Borders' continued inquiries about the Romanos, William Dredge told Borders that he had spoken to the Romanos and that they were interested in doing business. Dredge also told Borders that the Romanos had already paid $50,000 for help in their case from the judge. Dredge, however, was not actually in contact with the Romano brothers.

Testimony of William Dredge at 158-159.

*69. When William Dredge told William Borders that the Romanos had already paid $50,000 for help from the judge in their case, Borders responded that that was impossible because only Borders could do business with the judge. Borders also told Dredge that he would hate to be in the shoes of the person who had promised the judge's help when the Romanos found that person out.

Testimony of William Dredge at 159.

70. On April 23, 1981, one of Judge Hastings' law clerks, Jeffrey Miller, informed James Deichert, the prosecutor in the Romano case, that the sentencing in the Romano case would be held on May 11, 1981.

Stipulation 15.
House Exhibit 3.

71. In 1981, Jeffrey Miller was Judge Hastings' law clerk assigned to the Romano case.

Testimony of Jeffrey Miller at 1009, 1012.

72. It was customary for Judge Hastings' law clerks to call counsel before formally scheduling a particular proceeding to make sure there were no conflicts.

Testimony of Judge Hastings at 3221.

73. On April 27, 1981, at 2:20 p.m., Judge Hastings left a telephone message for "Bill" at William Borders' office.

House Exhibit 212.

74. On April 28, 1981, a Notice of Sentencing was filed in the Romano case, scheduling the sentencing for May 11, 1981 at 1:00 p.m.

House Exhibit 2.

75. On April 30, 1981, Judge Hastings left a telephone message for "WAB" at the office of William Borders which states: "At home at 6:30 only time he will be at home."

Stipulation 277.
House Exhibit 213.

76. A telephone message slip for "WAB" left at the offices of William Borders indicates a telephone call from "Al C Hastings". The message slip is undated. However, in the message book it is surrounded by slips dated May 1, 1981.

Stipulation 278.
House Exhibit 214.
Testimony of Cindy Rogers at 1544-1549.

77. On May 4, 1981, Judge Hastings entered an order in the Romano case requiring Thomas and Frank Romano to forfeit a total of $1,162,016 to the United States. He adopted all of the proposed findings of fact submitted by the prosecution.

Stipulation 17.
Testimony of James Deichert at 64.
Testimony of Judge Hastings at 3365.

78. Of the $1,162,016 forfeited, approximately $850,000 represented cash proceeds; the remainder represented the Romanos' interest in the Sea Inn restaurant. The forfeiture of

approximately $850,000 in cash was in the form of a judgement. No cash was actually seized by the Government.

Testimony of Judge Hastings at 3376.

79. A telephone message slip at the offices of William Borders, dated 5/4, reflects an "urgent" call from "Al C. Hastings," the telephone number (305) 350-4289 and the message: "will await call between 12 and 1 from you." The message slip appears on a page of the message book which shows calls between 10:00 and 10:20.

Stipulation 279.

*80. On May 5, 1981, Judge Hastings and William Borders met at the Miami International Airport.

Testimony of Judge Hastings at 3364-70.

81. On May 5, 1981, at 3:58 p.m., William Borders arrived at the Miami International Airport on Eastern Flight 177.

Prior Testimony of Laverne Boone, volume 19
at 157-158 and volume 22 at 103.
House Exhibits 90, 98, 106 and 107.

82. On May 5, 1981, at 4:47 p.m., William Borders made a reservation to fly from Miami International Airport to Washington National Airport and left William Dredge's telephone number as a contact.

Prior Testimony of Laverne Boone, volume 19
at 159-163.
House Exhibit 92.
Testimony of William Dredge at 157.

83. On May 5, 1981, at 6:50 p.m., William Borders was scheduled to depart Miami International Airport for Washington National Airport on Eastern Airlines.

Prior Testimony of Laverne Boone, volume 19
at 160-163.
House Exhibit 91.

84. On May 5, 1981, at 6:55 p.m., Judge Hastings was scheduled to depart Miami International Airport for Newark, New Jersey on Eastern Airlines.

Prior Testimony of Laverne Boone, volume 22 at 109-141.
House Exhibit 93.

85. On May 5, 1981, at 11:26 p.m., a call was placed from the telephone number of William Dredge to the home of Madeline Petty.

Prior Testimony of Madeline Petty (before the Eleventh Circuit Investigating Committee) at 220.
Testimony of William Dredge at 157.
House Exhibit 10h.

86. In May 1981, Madeline Petty did not know William Dredge.

Prior Testimony of Madeline Petty (before the Eleventh Circuit Investigating Committee) at 224.

87. On May 6, 1981, after midnight, a telephone call was made from a phone number in Madison, New Jersey, to the home of Madeline Petty. That call was charged to Judge Hastings' home phone.

Stipulation 280.
Prior Testimony of Madeline Petty (before the Eleventh Circuit Investigating Committee) at 220.

88. In 1981, Judge Hastings did not know Madeline Petty. He did not meet her until his criminal trial in 1983.

Stipulation 281.
Testimony of Judge Hastings at 3097.

89. From March through October 1981, William Borders was a social acquaintance of Madeline Petty, and could on occasion be reached at her residence.

Stipulation 76.
Prior Testimony of Madeline Petty (before the Eleventh Circuit Investigating Committee) at 222.

90. When Judge Hastings called the home telephone number of Madeline Petty in 1981, he did so in order to reach William Borders.

Testimony of Judge Hastings at 3097.

91. On May 7, 1981, at 7:47 a.m., a call was placed from the home phone of William Borders to the home phone of William Dredge.

House Exhibit 196b.
Testimony of William Dredge at 157.

92. On May 7, 1981, at 4:30 p.m., a telephone message for "Bill" from "Al Hastings" was left at William Borders' office. The message stated: "if you are up at 7 am, call him tomorrow."

House Exhibits 197, 215.
Testimony of Cindy Rogers at 1544-1549.

*93. On Sunday morning, May 10, 1981, William Borders called William Dredge and asked Dredge to call him back from a pay phone. Dredge did so. During the conversation, Borders told Dredge that Judge Hastings could not believe that the Romanos could not come up with the money. Borders also told Dredge that the Romanos were to be sentenced the next day, that the sentencing would be continued by Judge Hastings on his own motion, and that if the Romanos did not come up with the money the next time the hammer would fall.

Testimony of William Dredge at 161-162, 163 and 358.
Testimony of William Murphy at 544.

94. Only the judge has the power to continue a sentencing scheduled before that judge.

Testimony of Judge Hastings at 343.

95. On Sunday, May 10, 1981, in the afternoon, William Dredge was arrested based on an indictment charging him with conspiracy to sell drugs. The indictment had been filed on April 29, 1981, in the U.S. District Court for the District of Maryland.

Dredge's Testimony at 160.
House Exhibit 14.

*96. On May 10, 1981, after he was arrested, William Dredge had his wife call William Borders in order to obtain a name of an attorney in Florida who could represent him at his bond hearing to be held the next day, May 11, 1981.

Testimony of William Dredge at 330.

97. On May 10, 1981 at 5:38 p.m., a call was placed from the home phone of William Borders to the home phone of William Dredge.

House Exhibit 196b.
Testimony of William Dredge at 157.

98. Through William Borders, William Dredge hired Jesse McCrary to represent him at the bond hearing on May 11, 1981.

Testimony of William Dredge at 166.

99. Jesse McCrary is a close friend of Judge Hastings. They have known each other since 1962, when they attended law school together. Jesse McCrary also knows William Borders. He met Borders in 1970 or 1971 in connection with the National Bar Association.

Testimony of Jesse McCrary at 2539-2540,
2541, 2559-2560.

100. On May 11, 1981, at 6:27 a.m., a call was placed from the home phone of Judge Hastings to the home phone of William Borders.

House Exhibit 31h.
Testimony of Judge Hastings at 3379-80.

101. On May 11, 1981, at 6:28 p.m., a call was placed from the home phone of Judge Hastings to the home of Madeline Petty.

House Exhibit 31h.
Testimony of Judge Hastings at 3379-80.

102. On May 11, 1981, at 1:00 p.m., a hearing was to be held in the Romano case on the defendants' motion for new trial and motion for a judgement of acquittal. At the hearing, Thomas and Frank Romano were also to be sentenced.

Testimony of James Deichert at 64.
Testimony of Judge Hastings at 3377.

103. At the time of the May 11, 1981 hearing in the Romano case, Judge Hastings had received the presentence reports for Thomas and Frank Romano.

Testimony of Judge Hastings at 3220.

***104. On May 11, 1981, at the very beginning of the Romano hearing, Judge Hastings proceeded immediately to sentencing. He did not address the pending motions for new trial and for judgement of acquittal, which, if granted, would render sentencing moot.**

House Exhibit 4.
Testimony of Jeffrey Miller at 1149.
Testimony of Judge Hastings at 3377-78.

105. At the May 11, 1981 hearing in the Romano case, defense counsel, Neal Sonnet, requested a continuance in order to present additional legal arguments to the court. Counsel for the United States, James Deichert, opposed the continuance on the grounds that five months had passed since the guilty verdict and that the legal issues defense counsel wanted to raise had previously been briefed or raised.

Testimony of James Deichert at 65-67.
House Exhibit 4.

106. On May 11, 1981, Judge Hastings continued the sentencing of Thomas and Frank Romano and the hearing on their motions to a date to be chosen by the parties, subject to the court's schedule.

Stipulation 19.
House Exhibit 4.

107. In May, 1981, the local rules of the United States District Court for the Southern District of Florida required that notice be given to the Court and to opposing counsel prior to moving for a continuance.

Testimony of James Deichert at 66.

108. Neal Sonnett, counsel for the defendants, does not recall whether he called chambers to inform Judge Hastings that he would request a continuance of the May 11, 1981 hearing in the Romano case.

Testimony of Neal Sonnett at 457 and 480.

109. In 1981, it was Jeffrey Miller's practice and responsibility to inform Judge Hastings if an attorney was planning to move for a continuance.

Testimony of Jeffrey Miller at 1021.

*110. On May 11 or 12, 1981, William Borders called William Dredge and told him that the Romanos' sentencing had been postponed.

Testimony of William Dredge at 163, 236.

111. On May 28, 1981, William Dredge was in the Washington, D.C. area.

Prior Testimony of Laverne Boone, volume 19 at 169.
House Exhibit 109.

112. On May 29, 1981, at 7:53 a.m., a call was placed from the home phone of William Borders to the home phone of Judge Hastings.

House Exhibit 196b.

113. On May 29, 1981, at 8:27 a.m., a call was placed from the home phone of William Borders to the business phone of Judge Hastings.

House Exhibit 196b.

114. On June 1, 1981, the hearing in Romano that was continued on May 11, 1981, was rescheduled for July 8, 1981.

Testimony of James Deichert at 68-69.
House Exhibit 2.

115. On June 5, 1981, Thomas and Frank Romano filed a motion for reconsideration of the May 4, 1981 forfeiture order issued by Judge Hastings.

Stipulation 20.

116. On June 3, 1981, a grand jury returned an indictment in United States v. Accardo, which included counts against Santos Trafficante. On June 3, 1981, the case was assigned to Judge Hastings.

House Exhibit 216.
Testimony of Martha Rogers at 512-514.

117. Martha Rogers, an attorney with the Organized Crime and Racketeering Section of the Department of Justice, was assigned to the Accardo case.

Testimony of Martha Rogers at 512.

118. Santos Trafficante was a powerful crime boss who ran South Florida for organized crime. Trafficante's reputation was that he knew how to make an offer that a person could not refuse. A person who attempted to defraud Trafficante would be in a very dangerous situation.

Testimony of Martha Rogers at 513.
Testimony of William Murphy at 692.
Testimony of William Dredge at 168.

119. On June 16, 1981, at 5:24 p.m., a call was placed from the home phone of William Dredge to the business phone of William Borders.

House Exhibit 10f.
Testimony of William Dredge at 157.

120. On June 17, 1981, at 3:49 a.m., Judge Hastings arrived at Washington National Airport.

Prior Testimony of Laverne Boone, volume 22
at 103.
House Exhibit 97.

121. On June 18, 1981, at 11:56 a.m., a call was placed from the business phone of William Dredge to the business phone of William Borders.

House Exhibit 10f.

122. On June 19, 1981, a three-judge panel of the United States Court of Appeals for the Fifth Circuit held in United States v. Martino, No. 78-3611, slip op. at 8275 (5th Cir. June 19, 1981), that: "Congress did not intend to include in the forfeiture provision of [sec.] 1963 [of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. secs 1961 et seq.,] the fruits and profits obtained from a pattern of racketeering activity" and reversed in part the district court's forfeiture order which had forfeited insurance proceeds received as a result of arson. The subsequent history of the Martino decision is reported at 648 F.2d 367, vacated in part sub nom., United States v. Holt, 650 F.2d 651 (1981), cert. denied, 456 U.S. 949 (1982), rev'd, 681 F.2d 952 (5th Cir. 1982) (en banc), cert. granted, 459 U.S. 1101 (1983), aff'd sub nom., Russello v. United States, 464 U.S. 16 (1983).

Stipulation 21.

*123. The Martino decision by the United States Court of Appeals of the Fifth Circuit was binding on Judge Hastings and it was directly on point with respect to the forfeiture issue in the Romano case.

Testimony of Neal Sonnett at 439-440, 441-442.

124. On July 5, 1981, at 6:36 p.m., a call was placed from the home phone of William Borders to the home phone of William Dredge.

House Exhibit 196c.
Testimony of William Dredge at 157.

125. On July 5, 1981, a telephone call was placed from Judge Hastings' home phone number to William Borders' home phone number, at 8:35 p.m. The call lasted less than one minute.

Stipulation 284.

126. Judge Hastings called William Borders on July 7, 1981, at 11:56 a.m. The call lasted less than one minute.

Stipulation 285.

127. On July 7, 1981, William Dredge flew to Washington National Airport.

Prior Testimony of Laverne Boone, volume 22 at 101-103.
House Exhibits 17-19, and 111-114.

*128. On July 7, 1981, William Dredge stayed at Joseph Nesline's home in the Washington, D.C. area. At the same time, Santos Trafficante was a guest at Joseph Nesline's home.

Testimony of William Dredge at 167.

*129. On July 7, 1981, Santos Trafficante was scheduled to meet William Borders. Borders did not appear. Trafficante then went to the home of Joseph Nesline and attempted to reach Borders by telephone. At Nesline's home, Trafficante was observed by William Dredge. Dredge provided Trafficante with a phone number for William Borders. Trafficante thereafter reached Borders, arranged a meeting and left Nesline's apartment by cab.

Testimony of William Dredge at 169-170.

*130. During the evening of July 7, 1981, William Dredge had dinner with Joseph Nesline's wife at Duke Zeibert's. At another table, Nesline had dinner with Santos Trafficante.

Testimony of William Dredge at 170-171.

131. In June and July, 1981, the Accardo case, involving Santos Trafficante, proceeded. It was an active and ongoing case. On July 8, 1981, Judge Hastings held a status conference in Accardo.

Stipulation of the parties at pages 517-518 of the testimony of Martha Rogers.
Testimony of Marilyn Carter at 2797.
Testimony of Judge Hastings at 3224.

132. On July 8, 1981, Thomas and Frank Romano appeared before Judge Hastings for sentencing and argument on the defendants' motion for new trial, motion for a judgement of acquittal and motion for reconsideration of the May 4, 1981 forfeiture order.

Testimony of James Deichert at 70.
House Exhibit 6.

133. The briefs submitted by the parties in the Romano case prior to the July 8, 1981 hearing argued the effect of the Martino decision on the May 4, 1981 Romano forfeiture order.

Testimony of James Deichert at 74, 80-81.
Testimony of Jeffrey Miller at 1046.
Testimony of Judge Hastings at 3380-81.

134. Jeffrey Miller prepared a memorandum for Judge Hastings on the issues which were to be addressed at the July 8, 1981 hearing in the Romano case, including the defendants' motion for reconsideration of the May 4, 1981 forfeiture. The memorandum discussed the Martino decision, which called into question the Romano forfeiture.

Testimony of Jeffrey Miller at 1047, 1078.
House Exhibit 119.

135. Jeffrey Miller gave the memorandum discussing the Martino case to Judge Hastings some time in the morning of July 8, 1981. Prior to the time Judge Hastings assumed the bench on July 8, 1981, Miller briefly discussed the memorandum with him. At that time, Miller briefed Judge Hastings on the facts of the Martino case.

Testimony of Jeffrey Miller at 1047-1048, 1053-1054.
House Exhibit 119.
Testimony of Judge Hastings at 3225-26.

136. The part of the Martino slip opinion that refers to the forfeiture issue covers approximately two and a half pages.

House Exhibit 5.
Testimony of James Deichert at 82.
Testimony of Judge Hastings at 3381.

137. At the July 8, 1981 hearing in the Romano case, the forfeiture issue was argued by the parties for approximately one hour and Judge Hastings asked questions regarding the affect of the Martino decision.

Testimony of James Deichert at 82.

138. At the July 8, 1981 hearing in the Romano case, Judge Hastings stated that he had read the briefs submitted by the parties and was familiar with the Martino decision.

House Exhibit 6.
Testimony of James Deichert at 82.

139. At the July 8, 1981 hearing in the Romano case, Judge Hastings confirmed his May 4, 1981 forfeiture order, stating "I will allow the forfeitures as previously set out by the Court to be maintained, and . . . a brief order will be prepared that will recite the reasoning of the Court, at least insofar as the new matters that have arisen, more specifically the cases cited by counsel up to this time."

Stipulation 24.
House Exhibit 6.

140. When he confirmed his May 4 forfeiture order from the bench on July 8, 1981, Judge Hastings intended that the earlier forfeiture order would stand.

Testimony of Judge Hastings at 3226.

141. In 1981, Judge Hastings' reputation in the Southern District of Florida was that he was lenient with respect to sentencing.

Testimony of Jeffrey Miller at 1027.

142. On July 8, 1981, Judge Hastings sentenced each of the Romanos to three years imprisonment to be followed by a three-year period of probation and advised them of their rights to appeal.

Stipulation 25.

143. At the July 8, 1981 hearing in the Romano case, defense counsel, Neal Sonnett, had requested that Judge Hastings sentence Thomas and Frank Romano to probation.

Testimony of James Deichert at 73.

*144. James Deichert, the prosecutor in the Romano case, was surprised by the three year sentences imposed by Judge Hastings because Thomas and Frank Romano were both over 60 years of age, they had no other criminal convictions, and one of the Romano brothers had a history of heart attacks, including at least three coronary incidents while the Romano case was pending in the United States District Court. The three year sentences could have turned out to be life sentences, given the age and medical condition of each of the Romano brothers.

Testimony of James Deichert at 72, 128.

145. On July 8, 1981, Judge Hastings issued written judgement and commitment orders with regard to the sentencing of the Romanos to three years of incarceration.

Testimony of James Deichert at 84.
House Exhibit 7.

146. Some time in July, 1981, after the July 8, 1981 hearing in the Romano case, Jeffrey Miller prepared a draft order affirming Judge Hastings' May 4, 1981 forfeiture order.

House Exhibit 120.
Testimony of Jeffrey Miller at 1031.

147. A telephone message slip left at the offices of William Borders, dated 7/9, at 11:50 a.m., for "Bill" from "Al Hastings" bears the following message: "Sat morning Air Fla. #91 at 1045 from Key West Will be departing at 1:00"

Stipulation 286.

148. On July 9, 1981, William Dredge returned to Miami from the Washington, D.C. area.

Prior Testimony of Laverne Boone, volume 22
at 101-103.
House Exhibits 17-19 and 111-114.

149. On July 11, 1981, William Borders met Judge Hastings in Miami, Florida. They drove together to the home of Jesse McCrary where they spent the afternoon.

House Exhibit 156 at 2090-92.
House Exhibits 110, 205.
Testimony of Jesse McCrary at 2565.
Testimony of Judge Hastings at 3109-10.

150. On July 14, 1981, Thomas and Frank Romano filed notices of appeal from the final judgement and order of conviction, and from the judgement of forfeiture issued from the bench on July 8, 1981.

Stipulation 27.

151. On July 16, 1981, at 6:56 a.m., a call was placed from the home phone of Judge Hastings to the home phone of William Borders.

House Exhibit 31f.

152. From July 16, 1981, to July 18, 1981, William Dredge was in the Washington, D.C. area.

Prior Testimony of Laverne Boone, volume 22 at 101-103.
House Exhibits 20-22, 100, 116-118.
Testimony of William Dredge at 171.

*153. While in the Washington, D.C. area on July 16, 1981, Joseph Nesline asked William Dredge whether Nesline should act as the "money man" between Santos Trafficante and William Borders. Dredge responded that Nesline should not get involved.

Testimony of William Dredge at 173, 175.

*154. On July 16, 1981, at Joseph Nesline's apartment, William Dredge observed Nesline telling Santos Trafficante that he was not going to get involved in Trafficante's arrangement with William Borders.

Testimony of William Dredge at 175-176.

*155. On July 16, 1981, at Joseph Nesline's apartment, William Dredge observed Santos Trafficante calling William Borders. During the telephone call, Trafficante told Borders that Nesline was not going to be involved in their arrangement. Trafficante told Borders that someone would get back to Borders after Trafficante returned to Tampa, Florida.

Testimony of William Dredge at 177.

156. From July 17, 1981, to July 20, 1981, Judge Hastings was in Washington, D.C.

Prior Testimony of Richard Lowe, volume 1 at 176-178.
House Exhibits 68 and 69.
House Exhibit 156 at 1781 and 2039-40.
Testimony of Judge Hastings at 3114.

157. On July 18 or 19, 1981, Judge Hastings and William Borders were together in Washington, D.C.

House Exhibit 156 at 2039-43.
Respondent Exhibit 11.
Testimony of Judge Hastings at 3115-16.

*158. In 1981, William Borders introduced William Dredge to Judge Hastings at William Borders' office in Washington, D.C.

Testimony of William Dredge at 179.

159. In July of 1981, William Borders asked Judge Hastings to sign a character affidavit for someone in Baltimore. Judge Hastings claims that he did not know on whose behalf William Borders was making the request, for he categorically rejected the request, out of hand.

Testimony of Judge Hastings at 3449.

160. Judge Hastings did not inquire to determine the identity of the person for whom William Borders wanted the character affidavit, even though that was the only reasonable way to determine whether one could truthfully prepare such an affidavit.

Testimony of Judge Hastings at 3505.

161. On July 20, 1981, William Dredge went to the United States Attorneys Office in Miami, Florida and told persons there that he had information pertaining to the case involving Santos Trafficante. Dredge was directed to Martha Rogers, an attorney with the Organized Crime Strike Force, who was assigned to the Accardo case.

Testimony of Martha Rogers at 518-519.
Testimony of William Dredge at 180.

162. On July 20, 1981, William Dredge told Martha Rogers that he had information about the case involving Santos Trafficante, that a very prominent lawyer from Washington, D.C. was coming to Miami to meet with Trafficante, that Dredge was supposed to pick up the Washington, D.C. attorney at Miami International Airport, and that Dredge would tell the Government the information about the Trafficante case in exchange for the resolution of his criminal case pending in Baltimore, Maryland.

Testimony of William Dredge at 180-181.
Testimony of William Murphy at 531.
Testimony of Martha Rogers at 521-22.

163. On July 20, 1981, William Dredge did not identify the prominent Washington, D.C. attorney when he spoke to Martha Rogers.

Testimony of Martha Rogers at 519.

164. It is common for a person with pending criminal charges to offer information to law enforcement officials in exchange for favorable treatment on the charges pending against them.

Testimony of William Murphy at 532.

165. On July 20, 1981, William Dredge told Martha Rogers that a prominent Washington lawyer was involved in soliciting a bribe on behalf of Judge Hastings from Santos Trafficante in connection with the Trafficante's pending criminal case.

Testimony of Martha Rogers at 519.

166. On July 20, 1981, William Dredge also told Martha Rogers that he had been asked by the prominent Washington, D.C. attorney to approach the Romano brothers and ask them if they would pay $150,000 in exchange for a probation sentence by Judge Hastings.

Testimony of Martha Rogers at 519-520.
Testimony of William Dredge at 180-181.

167. On July 20, 1981, William Dredge told Martha Rogers that the prominent Washington, D.C. attorney was coming to Miami the next day, July 21, 1981, to meet with Santos Trafficante. Dredge also

told Rogers that the attorney would fly back to Washington, D.C. the same night because of a court commitment the attorney had in Washington, D.C. on July 22, 1981.

Testimony of Martha Rogers at 520-522.

168. Based on the information learned from William Dredge, the Government obtained the "manifest" (passenger lists) for the flights from Washington, D.C. to Miami, and the return flights from Miami to Washington, D.C. for July 21, 1981. Martha Rogers, who had lived in Washington, D.C., reviewed the manifest.

Testimony of Martha Rogers at 520, 522.

169. From the manifest of the airline flights from Washington, D.C. to Miami and the return flights from Miami to Washington, D.C. for July 21, 1981, Martha Rogers identified the name of William Borders, who was a prominent Washington, D.C. attorney at that time.

Testimony of Martha Rogers at 528.

170. Martha Rogers knew William Borders because she had been an Assistant United States Attorney in Washington, D.C. from 1977 to 1980. Borders had practiced regularly in the same courts.

Testimony of Martha Rogers at 522.

171. On July 21, 1981, attorneys in the Organized Crime Strike Force office, including Martha Rogers, notified the FBI that an individual had supplied information regarding possible bribery schemes in the courtroom of Judge Alcee Hastings.

Testimony of William Murphy at 530.

172. To corroborate the information learned from William Dredge, on July 21, 1981, Martha Rogers and an FBI agent went to the Miami International Airport.

Testimony of Martha Rogers at 523.

173. On July 21, 1981, at the Miami International Airport, William Borders was observed deplaning from a flight from Washington, D.C. He was identified by Martha Rogers and surveilled by the FBI.

Testimony of Martha Rogers at 523.

174. On July 21, 1981, at the Miami International Airport, William Borders walked to the concourse area, where cab stands are located. Borders then waited for approximately one hour. He paced back and forth, used a pay phone once or twice, and appeared to be waiting to be picked up.

Testimony of William Murphy at 534.

175. On July 21, 1981, after waiting approximately one hour at the Miami International Airport, William Borders took a cab to the residence of William Dredge.

Testimony of William Murphy at 534.

176. On July 21, 1981, after remaining at the residence of William Dredge for a little more than an hour, William Borders was driven to a shopping center by Dredge. Borders then took a taxi from the shopping center to the Fontainebleau Hotel in Miami Beach, Florida.

Testimony of William Murphy at 535.

177. On July 21, 1981, after William Borders was in the Fontainebleau Hotel lobby for approximately 20 to 30 minutes, Santos Trafficante entered the lobby and shook hands with Borders. Trafficante and Borders went to a small restaurant area in the hotel and had a conversation for 15 to 20 minutes.

Testimony of William Murphy at 536.

178. On July 21, 1981, after conversing for 15 to 20 minutes, Santos Trafficante and William Borders departed the Fontainebleau Hotel in a car registered to Josephine Trafficante, Santos Trafficante's wife. Trafficante and Borders drove to the Miami International Airport. They parked the car and walked to the Eastern Airlines concourse, at which time Trafficante and Borders shook hands and Trafficante was heard to say to Borders, "good job."

Testimony of William Murphy at 53.

179. On July 21, 1981, William Borders departed Miami International Airport for Washington National Airport.

Prior Testimony of Richard Lowe, volume 1 at 176-178.
House Exhibits 68-69.

180. On July 23, 1981, William Dredge met with agents of the FBI and gave them the information about the Romano case that Dredge had previously given to Martha Rogers. At that meeting, Dredge told the FBI agents that William Borders had asked Dredge to find out about the Romanos to see if they were agreeable to a bribery scheme.

Testimony of William Murphy at 538.

181. William Murphy was the FBI Special Agent assigned as the case agent to investigate the allegations of bribery involving Judge Hastings and William Borders. In 1981, Murphy had been a Special Agent of the FBI for ten years.

Testimony of William Murphy at 529-530.

182. Some time in July or August, 1981, William Dredge told Special Agent William Murphy that the Trafficante bribery deal with William Borders involved a payment of $1 million. Subsequently, Dredge informed Special Agent Murphy that the amount was reduced to $500,000 or $300,000.

Testimony of William Murphy at 661.

*183. During July and August, 1981, William Dredge maintained contact with William Borders. At this time, Borders was still interested in pursuing a deal with the Romanos.

Testimony of William Dredge at 182-183.

*184. William Dredge knew that William Borders' proposed scheme with respect to the Romanos involved the payment of a $150,000 bribe.

Testimony of William Dredge at 184.

*185. At some point in 1981, William Borders told William Dredge that as proof to the Romanos that Borders was the only person connected to Judge Hastings, Borders would have the judge show up at a pre-arranged time and location.

Testimony of William Dredge at 182.

186. On August 16, 1981, at 4:44 p.m., a call was placed from the business phone of William Borders to the home phone of William Dredge.

House Exhibit 27a.
Testimony of William Dredge at 157.

187. In the week of August 21, 1981, William Dredge told Special Agent William Murphy that William Borders would be coming to Miami on August 21, 1981 in order to meet with either Santos Trafficante or Judge Hastings regarding the Trafficante bribery scheme.

Testimony of William Murphy at 538.

188. In the week of August 21, 1981, the FBI determined that William Borders had a reservation on a flight to Miami for August 21, 1981. A female FBI agent surveilled Borders by sitting next to him on the plane. Borders and the female agent deplaned at the Miami International Airport. Borders then took a taxi to the Fontainebleau Hotel in Miami Beach, Florida.

Testimony of William Murphy at 538, 540.
Prior Testimony of Richard Lowe, volume 1 at 216-217.
House Exhibit 71.

189. On August 21, 1981, William Borders met Santos Trafficante on the steps of the Fontainebleau Hotel. They greeted each other and immediately proceeded to a car, which was registered in the name of Josephine Trafficante, Santos Trafficante's wife. Trafficante then drove Borders back to the Miami International Airport, using the same route travelled by the taxi Borders had taken to the hotel.

Testimony of William Murphy at 540.

190. On August 21, 1981, at the Miami International Airport, Santos Trafficante and William Borders exited the car and stood by

the car talking for approximately five to ten minutes. Trafficante then drove from the area and Borders went inside the airport terminal.

Testimony of William Murphy at 541.

191. On two separate occasions -- July 21, 1981 and August 21, 1981 -- the FBI confirmed through surveillance the information provided by William Dredge regarding meetings between William Borders and Santos Trafficante.

Testimony of William Murphy at 541.

192. On August 23, 1981, at 9:16 p.m., a call was placed from the home phone of William Borders to the home phone of William Dredge.

House Exhibit 196d.
Testimony of William Dredge at 157.

193. On August 27, 1981, the United States Court of Appeals for the Fifth Circuit issued an opinion in the case of United States v. Peacock, 654 F.2d 339 (1981), vacated in part, 689 F.2d 356 (5th Cir. 1982), cert. denied, 464 U.S. 965 (1983). In its August 22, 1981 opinion, the court in Peacock followed the June 19, 1981 decision in Martino.

Stipulation 111.
House Exhibit 121.

*194. The Peacock decision did not have additional precedential significance. Once the Martino case had been issued, it was the law of the United States Court of Appeals for the Fifth Circuit until it was either reversed or overruled by the entire Fifth Circuit en banc. One Fifth Circuit panel has to follow a prior decision of another Fifth Circuit panel.

Testimony of James Deichert at 132.
Testimony of Jeffrey Miller at 1059.

195. On August 31, 1981, William Dredge told representatives of the FBI that he could introduce to William Borders an agent posing as one of the Romano brothers. Dredge told the FBI that Borders was not familiar with the appearance of the Romano brothers.

Testimony of William Dredge at 183-184.
Testimony of William Murphy at 543.

*196. William Dredge was unwilling to cooperate with the FBI in an investigation of the Trafficante bribery scheme because he was concerned about his and his family's welfare. The FBI believed that Dredge's fears with regard to Santos Trafficante were justified.

Testimony of William Murphy at 542.

*197. In August 1981, the FBI and the Public Integrity Section of the U.S. Department of Justice developed an undercover plan to investigate the allegations of a proposed bribery scheme involving the Romano brothers. The focus of the plan was to prove or disprove the existence of the bribery scheme.

Testimony of William Murphy at 543.
Testimony of H. Paul Rico at 775, 781.

198. The undercover plan required William Dredge to introduce an undercover agent, posing as one of the Romano brothers, to William Borders. The next step was to arrange some type of show of proof to determine whether Judge Hastings was participating in the scheme with Borders.

Testimony of William Murphy at 544.

*199. Prior to setting up the undercover plan, William Dredge told William Borders that the Romanos were showing interest in the bribery deal.

Testimony of William Murphy at 545-546.
Testimony of William Dredge at 180-181.

*200. Toward the end of August, 1981, William Dredge discussed the Romano bribery deal with William Borders. The Romanos were to pay a particular amount of money in exchange for the reduction of their three year jail sentences. Borders told Dredge that he only wanted to deal with one of the Romano brothers, not an intermediary.

Testimony of William Murphy at 546-547.

201. On August 31, 1981, at 5:42 p.m., a call was placed from the business phone of William Dredge to the business phone of William Borders.

House Exhibit 11d.

202. On September 1, 1981, at 11:36 a.m., a call was placed from the business phone of William Borders to the business phone of Judge Hastings.

House Exhibit 27b.

203. On September 9, 1981, at 9:53 a.m., a call was placed from the business phone of William Dredge to the business phone of William Borders.

House Exhibit 11d.

204. On September 10, 1981, at 8:00 a.m., a call was placed from the home phone of William Borders to the home phone of William Dredge.

House Exhibit 196e.
Testimony of William Dredge at 157.

205. From March through October 1981, Cynthia Rogers was a secretary and receptionist at the law offices of William Borders.

Stipulation 33.

206. On September 10, 1981, at approximately 12:45 p.m., Cynthia Rogers recorded the following reservation for William Borders for travel from Washington to Miami to West Palm Beach to Washington:

Fri - Air Fla. #131: 7:30 - 9:45
Sat - Eastern #890: 9:25 - 9:51 a.m.
Sun - Delta - West Palm #608: 7:00 a.m. - 9:49 - Atlanta.
1:20 arrive Nat.

125
46
149 $320

Stipulation 34.

207. On September 10, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' office reflecting a call at 9:35

a.m. from Judge Hastings to William Borders with the message "not coming to D.C. today Call him between 4:30 and 5 today will be in his office for call"

Stipulation 35.
House Exhibit 28.

208. On Thursday, September 10, 1981, at 1:29 p.m., William Dredge called William Borders at his law office and said Thomas and Frank Romano were ready to meet Borders and make a deal.

Testimony of William Dredge at 184-185.
Testimony of William Murphy at 549-550, 552.
House Exhibits 11d and 205.

209. During the September 10, 1981, telephone conversation between William Dredge and William Borders, beginning at 1:29 p.m., Dredge arranged to meet Borders at the Miami International Airport on September 12, 1981, at 8:00 a.m., for the purpose of introducing Borders to "Frank Romano."

Testimony of William Dredge at 185.
Testimony of William Murphy at 550, 552.

210. FBI Special Agent William Murphy was present when William Dredge called William Borders at 1:29 p.m., on September 10, 1981.

Testimony of William Murphy at 529.

211. On September 10, 1981, at 4:40 p.m., a call, lasting one minute or less, was placed from William Borders' law office to Judge Hastings' chambers.

Stipulation 36.

212. On September 10, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' law office reflecting a call at 5:10 p.m. from Judge Hastings to Borders with the following message: "He'll be waiting for call - Have them get him off the bench He'll also let them know if you call to get him to phone."

Stipulation 37.

213. On September 10, 1981, at 5:34 p.m., a call, lasting four minutes, was placed from William Borders' law office to Judge Hastings' chambers.

Stipulation 38.

*214. On September 11, 1981, Judge Hastings and William Borders met at Washington National Airport to discuss the Romano bribery scheme. The meeting took place the night before William Dredge introduced Borders to the undercover agent posing as Frank Romano.

Stipulations 39-46.
House Exhibits 29, 30, 31d, 32, 33, 34, 35, and 37.
Testimony of William Murphy at 561-563.

215. On the morning of September 11, 1981, Judge Hastings' secretary changed his reservations from a 6:50 p.m. flight to Washington to a 3:48 p.m. flight.

Testimony of Judge Hastings at 3429.
House Exhibit 29.

216. On September 11, 1981, Judge Hastings was scheduled to leave Miami International Airport at 3:48 p.m. and arrive in Washington, D.C. at 6:00 p.m.

Stipulation 39.

217. On September 11, 1981, Judge Hastings' flight was delayed and he actually left Miami International Airport at 5:50 p.m. and arrived at Washington National Airport at 8:04 p.m.

Stipulation 40.
Testimony of Judge Hastings at 3133-34.
House Exhibit 30.

218. On September 11, 1981, two calls were placed from the Miami International Airport to the office of William Borders. One call was placed at 3:27 p.m. and the other call was placed at 4:19 p.m. These calls were charged to Judge Hastings' home phone.

Stipulation 41.
House Exhibits 31d and 32.
Testimony of Judge Hastings at 3131.

219. On September 11, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' law offices reflecting a call at 4:20 p.m. from Judge Hastings to William Borders with the message "Flight further delayed; not leaving until 5."

Stipulation 42.
House Exhibit 32.

220. Prior to September 11, William Borders informed Judge Hastings that Borders would be attending a family reunion in Florida the weekend of September 11-12.

Testimony of Judge Hastings at 3130.

221. Invitations to the family reunion had been sent out approximately six months earlier.

Testimony of David Thomas at 793.

222. On September 11, 1981, William Borders was scheduled to leave Washington National Airport for Miami, Florida at 7:30 p.m. on Air Florida flight 131.

Stipulation 43.
House Exhibit 33, 99.

223. On September 11, 1981, William Borders did not take Air Florida flight 131 for which he had reservations and instead departed from Washington National Airport on Eastern Airlines flight 459 which was scheduled to depart at 9:20 p.m.

Stipulation 44.
House Exhibits 33, 34, 35.

224. On September 11, 1981, there was one hour and 16 minutes between the time Judge Hastings arrived at Washington National Airport and the time William Borders departed Washington National Airport.

Testimony of William Murphy at 562.

225. On September 12, 1981, William Borders arrived in Miami, Florida at 1:30 a.m. via Eastern Airlines flight 655 from Atlanta.

Stipulation 45.
Testimony of William Murphy at 563.

226. On September 11, 1981, Judge Hastings registered at the Sheraton-Washington Hotel in Washington, D.C. at 10:14 p.m.

Stipulation 46.
House Exhibit 37.

227. The Sheraton-Washington Hotel in Washington, D.C. is approximately a 15 minute drive from Washington National Airport.

Testimony of William Murphy at 561.

228. The FBI arranged for H. Paul Rico, a retired FBI agent, to impersonate Frank Romano in the undercover investigation. Rico had been a Special Agent of the FBI for 24 and one half years and had worked undercover. Rico was not paid for impersonating Frank Romano.

Stipulation 31.
Testimony of H. Paul Rico at 752, 774.
Testimony of William Murphy at 548.

229. On September 12, 1981, at about 8:25 a.m., William Dredge, William Borders and H. Paul Rico met at the Miami International Airport. Rico was wearing a body recorder and a tape recording was made of the meeting.

Testimony of William Dredge at 185.
Testimony of H. Paul Rico at 752-753, 765.
Testimony of William Murphy at 563.
House Exhibits 38a and b.

230. On September 12, 1981, at approximately 8:25 a.m., William Dredge identified H. Paul Rico as Frank Romano and introduced him to William Borders.

Testimony of William Dredge at 185.
Testimony of H. Paul Rico at 785.
House Exhibits 38a and b.

231. On September 12, 1981, shortly after 8:25 a.m., William Borders and H. Paul Rico met out of the presence of William Dredge.

House Exhibits 38a and b.
Testimony of William Murphy at 567.
Testimony of William Dredge at 185.

***232. H. Paul Rico had no contact with William Dredge after Dredge introduced Rico to William Borders at the Miami International Airport on September 12, 1981.**

Testimony of H. Paul Rico at 773.

233. During their meeting on September 12, 1981 at the Miami International Airport, William Borders told H. Paul Rico that within ten days of Rico's paying $150,000, an order would be signed returning a substantial amount of the property Thomas and Frank Romano had lost [in the forfeiture].

House Exhibits 38a and b.
Testimony of William Murphy at 580.
Testimony of H. Paul Rico at 772-773.

234. During their meeting on September 12, 1981, at the Miami International Airport, William Borders wrote the following on a paper which he then showed to H. Paul Rico: "$150,000" and "in ten days." Borders retained the piece of paper.

Testimony of H. Paul Rico at 753.
Testimony of William Murphy at 567.

235. During their meeting on September 12, 1981, at the Miami International Airport, William Borders told H. Paul Rico that "the other will follow," meaning that the sentences would be reduced, once Thomas and Frank Romano filed a "motion for mitigation."

House Exhibits 38a and b.

236. During their meeting on September 12, 1981, at the Miami International Airport, H. Paul Rico and William Borders agreed that for $150,000, the Romanos' three year jail sentences would be reduced. Borders offered the return of a substantial amount of Romano property previously ordered forfeited as a show of proof of Judge Hastings' involvement.

Testimony of H. Paul Rico at 753.
Testimony of William Murphy at 581, 738-739.
House Exhibits 38a and b.

237. During their meeting on September 12, 1981, at the Miami International Airport, in response to H. Paul Rico's request for assurances, William Borders suggested that Rico give the money to

William Dredge. According to Borders' suggestion, Dredge would then hold the money until the order returning the forfeited property was signed.

House Exhibits 38a and b.
Testimony of H. Paul Rico at 759, 786.

238. During their meeting on September 12, 1981, at the Miami International Airport, H. Paul Rico rejected William Borders' suggestion that the money be held by William Dredge until the order returning the forfeited property was signed. Rico also suggested that Borders have Judge Hastings appear at an appointed time and place as an additional means of proving that Judge Hastings was part of the bribery scheme.

House Exhibits 38a and b.
Testimony of H. Paul Rico at 759, 786-787.

239. During their meeting on September 12, 1981, at the Miami International Airport, William Borders selected Wednesday, September 16, 1981, as the date for Judge Hastings' appearance. Borders allowed H. Paul Rico to select the time and place.

House Exhibits 38a and b.
Testimony of William Murphy at 570.

240. During their meeting on September 12, 1981, at the Miami International Airport, H. Paul Rico selected 8:00 p.m. at the main dining room of the Fontainebleau Hotel in Miami Beach, Florida, as the time and place for Judge Hastings' appearance.

House Exhibits 38a and b.

241. During their meeting on September 12, 1981, William Borders assured H. Paul Rico that he did not have to check with Judge Hastings to make sure that the time and place chosen for the judge's appearance would be convenient for the judge.

House Exhibits 38a and b.

242. During their meeting on September 12, 1981, at the Miami International Airport, H. Paul Rico and William Borders agreed to meet again at the Miami International Airport on September 19, 1981, at which time Rico would make a payment on the bribery deal.

House Exhibits 38a and b.
Testimony of William Murphy at 572-573.

243. On September 12, 1981, William Borders had no official connection with the Romano case, nor was he a member of the Florida bar.

Stipulation 58.

244. William Borders neither participated in nor filed a notice of appearance as counsel in the Romano case.

Testimony of James Deichert at 55.

245. In 1981, in the United States District Court for the Southern District of Florida, the official files of all active cases assigned to Judge Hastings were kept in Judge Hastings' chambers. A person other than a member of Judge Hastings' staff had to ask a staff member to see the file. The files could not be removed from chambers.

Testimony of Betty Williams at 2746-2747.
Testimony of Jeffrey Miller at 1039-1040.

*246. William Borders did not call Judge Hastings' secretary or any other member of Judge Hastings' staff and ask about the Romano case. Judge Hastings' secretary, Betty Williams, does not tell someone outside of chambers when a court order will be issued.

Testimony of Betty Williams at 2748.

247. As a part of the bribery scheme William Borders made promises to H. Paul Rico that certain events would occur which could only be done by Judge Hastings.

Exhibits 38a and b.
Testimony of Judge Hastings at 3434-35.

248. Only the judge can issue a forfeiture order in a case over which the judge is presiding.

Testimony of Judge Hastings at 3434.

249. Only the judge had the power to mitigate the sentences of the Romanos if they had dismissed their appeals and sought mitigation.

Testimony of Judge Hastings at 3434-35.

250. According to Judge Hastings, William Borders did not speak to him about the judge's availability on Wednesday, September 16 before Borders met with H. Paul Rico.

Testimony of Judge Hastings at 3145-46.

251. During the fall of 1981 Judge Hastings had a very busy travel schedule.

Testimony of Judge Hastings at 3125, 3157-58, 3176-78.

252. On September 11 and 12, 1981, the plea agreement of William Dredge was finalized and signed.

Testimony of William Murphy at 532.

253. On September 12, 1981, at approximately 11:00 a.m., William Borders boarded Eastern Airlines flight 890, departing from Miami, Florida for West Palm Beach, Florida.

Stipulation 60.

254. On September 12, 1981, David Thomas, a cousin of William Borders, met Borders at the West Palm Beach Airport.

Stipulation 62.

255. On September 11, 12 and 13, 1981, a family reunion involving the family of William Borders was scheduled in Fort Pierce, Florida.

Testimony of David Thomas at 793.

256. On September 12, 1981, David Thomas drove William Borders from West Palm Beach, Florida to Fort Pierce, Florida in order to attend the family reunion.

Testimony of David Thomas at 795-796.

257. The drive by David Thomas and William Borders from West Palm Beach, Florida to Fort Pierce, Florida on September 12, 1981, took about one hour and twenty minutes.

Stipulation 66.

258. On September 12, 1981, at 1:06 p.m., William Borders called Eastern Airlines and made a reservation for Eastern Airlines flight 532, which was scheduled to depart that day from West Palm Beach to Atlanta at 4:12 p.m. At the same time, William Borders made a reservation for Eastern Airlines flight 904, which was scheduled to depart that day from Atlanta to Washington, D.C. at 6:45 p.m.

Prior Testimony of Laverne Boone, volume 22 at 142-146.
Prior Testimony of Richard Lowe, volume 1 at 225-226.
House Exhibit 73.

259. Fort Pierce is approximately 60 miles north of West Palm Beach, Florida.

Stipulation 254.

260. On September 12, 1981, at 3:30 p.m., William Borders called Eastern Airlines and cancelled his reservation for Eastern Airlines flight 532 (West Palm Beach to Atlanta) and made a reservation for Eastern Airlines flight 266, which was scheduled to depart that day from Melbourne, Florida to Atlanta at 4:35 p.m.

Prior Testimony of Laverne Boone, volume 22 at 142-146.
Prior Testimony of Richard Lowe, volume 1 at 225-226.
House Exhibit 73.

261. Fort Pierce is approximately 60 miles south of Melbourne, Florida.

Stipulation 255.

262. On September 12, 1981, at 4:39 p.m., at the Melbourne Airport, William Borders cancelled his reservation for Eastern Airlines flights 266 (Melbourne to Atlanta) and 904 (Atlanta to Washington), and made a reservation for Eastern Airlines flight 858, which was scheduled to depart that day from Orlando, Florida

to Washington, D.C. at 8:08 p.m. Eastern Airlines flight 858 was scheduled to arrive in Washington at 10:00 p.m.

Prior Testimony of Laverne Boone, volume 22 at 142-146.
Prior Testimony of Richard Lowe, volume 1 at 225-226.
House Exhibit 73.

263. Fort Pierce is approximately 115 miles from Orlando, Florida.

Stipulation 256.

264. On September 12, 1981, at 6:02 p.m., at the Orlando Airport, William Borders cancelled his reservation for Eastern Airlines flight 858 (Orlando to Washington) and made a reservation for Eastern Airlines flight 664, which was scheduled to depart that day from Orlando to Baltimore-Washington International Airport, at 6:45 p.m. Eastern Airlines flight 664 was scheduled to arrive at Baltimore-Washington International Airport at 8:35 p.m.

Prior Testimony of Laverne Boone, volume 22 at 142-146.
Prior Testimony of Richard Lowe, volume 1 at 225-226.
House Exhibit 73.

265. On September 12, 1981, William Borders flew from Orlando, Florida to Baltimore-Washington International Airport on Eastern Airlines flight 664.

Stipulation 71.
House Exhibit 72.

266. On September 12, 1981, Eastern Airlines flight number 664 arrived at the gate at Baltimore-Washington International Airport at 8:58 p.m.

Stipulation 72.
House Exhibit 74.

*267. During the evening of September 12, 1981, William Borders called William Dredge and told Dredge that the meeting with Frank Romano (impersonated by H. Paul Rico) had gone fine and that Borders would take care of everything from this point forward.

Testimony of William Dredge at 186.

268. On September 12, 1981, Judge Hastings was registered at the Sheraton-Washington Hotel, room 7022.

Stipulation 73.

269. On September 12, 1981, Jesse McCrary was registered at the Sheraton-Washington Hotel, room 7024, the room next to Judge Hastings.

Stipulation 74.
Testimony of Judge Hastings at 3136.

270. Some time after 10:00 p.m., on September 12, 1981, William Borders arrived at Judge Hastings' Sheraton-Washington Hotel room.

House Exhibit 156 at 1840-41 and 2110-11.
Testimony of Judge Hastings at 3142.
Testimony of Jesse McCrary at 2555.

271. When William Borders arrived at Judge Hastings' Sheraton-Washington Hotel room on Saturday evening, September 12, 1981, he found Judge Hastings in his room, along with Jesse McCrary, Donna Mendez, Pearl Dabreau and Margaret Dabreau.

Testimony of Judge Hastings at 3137, 3141-42.
Testimony of Jesse McCrary at 2554.
Testimony of Donna Mendez Myrill at 834.
Testimony of Pearl Dabreau Mapp at 2681-2682.
House Exhibit 205.

272. In September, 1981, Donna Mendez was a Howard University law student, living in Washington, D.C. Previously she had worked as a paralegal and secretary at Jesse McCrary's law firm. Ms. Mendez was invited to dinner on September 12, 1981 by Jesse McCrary. In September, 1981, Donna Mendez knew Judge Hastings and William Borders.

Testimony of Donna Mendez Myrill at 821, 823.

273. In September, 1981, Pearl Dabreau lived in Washington, D.C. with her sister, Margaret Dabreau. Judge Hastings had met Pearl

Dabreau approximately seven months earlier on an airline flight from Miami to Washington, D.C. Judge Hastings had invited Pearl Dabreau to dinner for September 12, 1981.

Testimony of Pearl Dabreau Mapp at 2678-2679, 2693.
Testimony of Judge Hastings at 3137.

274. With Judge Hastings' assent, Pearl Dabreau had invited her sister Margaret Dabreau to join them for dinner on Saturday, September 12, 1981.

Testimony of Pearl Dabreau Mapp at 2693.
Testimony of Judge Hastings at 3137.

275. On September 12, 1981, Jesse McCrary and Donna Mendez arrived at Judge Hastings' Sheraton-Washington Hotel room at approximately 8:00 p.m.

Testimony of Donna Mendez at 821.

276. On September 12, 1981, Pearl and Margaret Dabreau arrived at Judge Hastings' Sheraton-Washington Hotel room some time between 7:00 and 8:00 p.m.

Testimony of Pearl Dabreau Mapp at 2680.

*277. During the evening of September 12, 1981, Judge Hastings and the other persons who were socializing in his room at the Sheraton-Washington Hotel were waiting for William Borders to arrive.

Testimony of Donna Mendez Myrill at 823-824.

*278. During the evening of September 12, 1981, while in the Sheraton Washington Hotel room of Judge Hastings, Donna Mendez was told by either Judge Hastings or Jesse McCrary that they were waiting for William Borders.

Testimony of Donna Mendez Myrill at 823-824, 832.

279. Jesse McCrary recalls that on September 12, 1981, the group in Judge Hastings' Sheraton-Washington Hotel room was sitting there talking, doing nothing and waiting.

Testimony of Jesse McCrary at 2567, 2570.

280. Pearl Dabreau recalls that on September 12, 1981, the group in Judge Hastings' Sheraton-Washington Hotel room did not go to dinner right away and were apparently waiting for something.

Testimony of Pearl Dabreau Mapp at 2688.
House Exhibit 227.

*281. When William Borders arrived at Judge Hastings' Sheraton-Washington Hotel room some time after 10:00 p.m. on September 12, 1981, Judge Hastings was not surprised.

Testimony of Donna Mendez Myrill at 824.
Testimony of Pearl Dabreau Mapp at 2688-2689.
House Exhibit 227.

*282. When William Borders arrived at Judge Hastings' Sheraton-Washington Hotel room some time after 10:00 p.m. on September 12, 1981, Donna Mendez was not surprised.

Testimony of Donna Mendez Myrill at 824.

283. When William Borders arrived at Judge Hastings' Sheraton-Washington Hotel room some time after 10:00 p.m. on September 12, 1981, Judge Hastings, Jesse McCrary, Donna Mendez, Pearl Dabreau and Margaret Dabreau had not yet had dinner.

Testimony of Judge Hastings at 3144.

284. After William Borders arrived at Judge Hastings' Sheraton-Washington Hotel room on September 12, 1981, Judge Hastings, William Borders, Jesse McCrary, Donna Mendez and Pearl and Margaret Dabreau went to dinner at a restaurant in the hotel.

Testimony of Judge Hastings at 3144.
Testimony of Donna Mendez Myrill at 824.
Testimony of Pearl Dabreau Mapp at 2682-2683.

285. On September 12, 1981, approximately two hours passed from the time Donna Mendez and Jesse McCrary arrived at Judge Hastings' room at the Sheraton Washington Hotel and the time the group went to dinner.

Testimony of Donna Mendez Myrill at 824.

*286. On Sunday, September 13, 1981, William Borders drove Judge Hastings and Jesse McCrary to Washington National Airport. At no time during the drive, including when they departed each other's company, did either Judge Hastings or Borders mention seeing each other the next week at the Fontainebleau Hotel.

Testimony of Jesse McCrary at 2557, 2576.

287. Either during the evening of September 12, 1981, or during the morning of September 13, 1981, William Borders told Judge Hastings about the dinner at the main dining room of the Fontainebleau Hotel in Miami Beach on Wednesday, September 16, 1981, at 8:00 p.m.

Testimony of Judge Hastings at 3145-46.

288. Judge Hastings called William Borders from the airport as he was passing through Washington on September 14, 1981. Judge Hastings did not come into the city or have any other business there; he was simply changing planes. At that time they again discussed the September 16th dinner at the Fountainebleau.

Testimony of Judge Hastings at 3147-48, 3592, 3671.

289. On September 15, 1981, William Borders and Madeline Petty flew from Washington, D.C. to Las Vegas, Nevada.

Stipulation 77.
House Exhibits 39, 40.

290. The purpose of the September 15-18, 1981, trip to Las Vegas, Nevada, by William Borders and Madeline Petty, was to attend the Sugar Ray Leonard - Tommy Hearns championship fight.

Stipulation 78.

291. The September 15-18, 1981, trip to Las Vegas, Nevada, by William Borders and Madeline Petty, had been planned since at least September 1, 1981.

Stipulation 79.
Prior Testimony of Madeline Petty (at Judge Hastings' criminal trial) at 631.

292. William Borders did not ask Madeline Petty to keep secret the fact that they were planning to attend the championship fight in Las Vegas, Nevada on September 16, 1981.

Stipulation 80.

293. Cynthia Rogers, William Borders' secretary, knew that Borders was attending a championship fight in Las Vegas, Nevada in mid-September 1981.

Testimony of Cynthia Rogers at 1544, 1549.

294. William Borders did not ask Cynthia Rogers to keep secret the fact that he was attending a championship fight in Las Vegas, Nevada in mid-September 1981.

Testimony of Cynthia Rogers at 1550.

*295. In September 1981, prior to September 16, 1981, Hemphill Pride saw William Borders for approximately five minutes in Washington, D.C. At that time, Pride knew Borders was going to the Leonard-Hearns championship fight and they discussed who was going to win. They did not discuss writing letters for Pride or raising funds for Pride.

Testimony of Hemphill Pride at 1290-1291, 1293-1294.

296. During their first meeting at the Miami International Airport, on September 12, 1981, William Borders told H. Paul Rico that he would be attending the Sugar Ray Leonard - Tommy Hearns championship fight in Las Vegas, Nevada.

House Exhibits 38a and b.
Testimony of William Murphy at 572.

297. It was William Borders' usual practice to attend major fights.

Testimony of Cynthia Rogers at 1550.

*298. On September 16, 1981, Judge Hastings appeared at the Fortainebleau Hotel at approximately 7:45 p.m. He appeared as a show of proof of his involvement in the bribery conspiracy, as promised by William Borders to H. Paul Rico. Judge Hastings did not go to the Fontainebleau Hotel that evening in order to meet William Borders.

Testimony of Essie Thompson at 836-840, 842-845.
Testimony of Judge Hastings at 3148-49.
Testimony of William Murphy at 570.
Stipulations 86 and 89.

299. On September 15, 1981, Judge Hastings called Essie Thompson and invited her out for dinner on September 16, 1981.

Testimony of Essie Thompson at 837.
Testimony of Judge Hastings at 3148.

300. Essie Thompson, a certified public accountant, was, and continues to be, a social acquaintance of Judge Hastings.

Testimony of Essie Thompson at 836-837.

301. Judge Hastings called Essie Thompson on September 16, 1981, to arrange the time that he would pick her up for dinner that night.

Testimony of Essie Thompson at 839.

302. Judge Hastings did not mention in either of his calls to Essie Thompson on September 15 and 16, 1981, that they would be meeting anyone for dinner on September 16, 1981. During those calls, Judge Hastings never mentioned William Borders.

Testimony of Essie Thompson at 838, 839-840, 845.
Testimony of Judge Hastings at 3438.

303. At some time prior to 7:45 p.m. on September 16, 1981, Judge Hastings made reservations for two for dinner at the Fontainebleau Hotel main dining room on September 16, 1981.

Stipulation 86.
Testimony of Judge Hastings at 3149, 3438.

304. Judge Hastings picked up Essie Thompson at her home on September 16, 1981. During the drive, he told her they were having

dinner at the Fontainebleau Hotel. During the drive, Judge Hastings never mentioned that they were meeting William Borders at the Fontainebleau Hotel.

Testimony of Essie Thompson at 840, 845.

305. On September 16, 1981, it took approximately 20 to 25 minutes to reach the Fontainebleau Hotel from Essie Thompson's home.

Testimony of Essie Thompson at 840.

306. At approximately 7:45 p.m., on September 16, 1981, Judge Hastings and Essie Thompson arrived at the Fontainebleau Hotel. They entered the hotel, looked around the lobby, looked into two other restaurants and then proceeded to the main dining room.

Testimony of William Murphy at 570.
Testimony of Essie Thompson at 841.
Testimony of Judge Hastings at 3149.

307. When they arrived at the Fontainebleau Hotel on September 16, 1981, and looked around the lobby and into two other restaurants, Judge Hastings did not tell Essie Thompson that they were meeting anyone else.

Testimony of Judge Hastings at 3439.
Testimony of Essie Thompson at 842.

*308. On September 16, 1981, at the main dining room of the Fontainebleau Hotel, Judge Hastings did not tell the hostess that he was expecting anyone to join them.

Testimony of Essie Thompson at 842.

309. On September 16, 1981, at the Fontainebleau Hotel, Judge Hastings and Essie Thompson were seated at a table with four place settings. Two place settings were then removed.

Testimony of Essie Thompson at 842.
Testimony of Judge Hastings at 3306-07.

310. On September 16, 1981, at the Fontainebleau Hotel, Judge Hastings did not protest at the removal of two of the four place settings at the table where he and Essie Thompson were seated for dinner.

Testimony of Essie Thompson at 842-843.
Testimony of Judge Hastings at 3306-07, 3440-41.

311. On September 16, 1981, at the Fontainebleau Hotel, Judge Hastings did not tell the waiter that he was expecting someone else to be joining him and Essie Thompson.

Testimony of Essie Thompson at 843.

312. On September 16, 1981, at the Fontainebleau Hotel, Judge Hastings left the table where he and Essie Thompson were seated some time after they had ordered drinks but before their dinner was served. Judge Hastings did not tell Ms. Thompson where he was going.

Testimony of Essie Thompson at 843.

313. On September 16, 1981, at the Fontainebleau Hotel, Judge Hastings left the table where he and Essie Thompson were seated for approximately five minutes.

Testimony of Essie Thompson at 843.

314. On September 16, 1981, when Judge Hastings got up from his table at the Fontainebleau Hotel, he walked to the Poodle Lounge area of the hotel and then returned to the table. He did not check other restaurants in the hotel, including The Steak House, La Favorita, The Gaslight, Under the Trees Restaurant or the Coffee Shop.

Testimony of Judge Hastings at 3150, 3443-44.

315. On September 16, 1981, when Judge Hastings returned to his table at the Fontainebleau Hotel, he told Essie Thompson that he had been looking for some friends who he was expecting from Washington, D.C. Judge Hastings did not state that the friends were joining them for dinner.

Testimony of Essie Thompson at 843.
Testimony of Judge Hastings at 3150.

*316. On September 16, 1981, Judge Hastings got up from his table at the Fontainebleau Hotel in order to be seen by representatives of the Romano brothers.

Testimony of Essie Thompson at 836-840, 842-845.
Stipulations 86 and 89.

317. On September 16, 1981, neither William Borders nor any one else joined Judge Hastings and Essie Thompson while they had dinner at the Fontainebleau Hotel. Their dinner lasted approximately two hours.

Testimony of Essie Thompson at 843-844.

318. On September 16, 1981, at the Fontainebleau Hotel, Judge Hastings was always in Essie Thompson's presence except when he left the table for five minutes prior to being served dinner, and when they each went to the restroom, for approximately five minutes, prior to their departure from the hotel.

Testimony of Essie Thompson at 844.

319. On September 16, 1981, during the course of their time at the Fontainebleau Hotel, Essie Thompson did not hear Judge Hastings speak to any member of the hotel staff in an attempt to locate someone he was expecting to meet.

Testimony of Essie Thompson at 844.

320. On September 16, 1981, at the Fontainebleau Hotel, Judge Hastings did not have William Borders paged.

Stipulation 89.
Testimony of Judge Hastings at 3440.

321. At no time on September 16, 1981, during their dinner date, did Judge Hastings mention William Borders to Essie Thompson.

Testimony of Essie Thompson at 845.
Testimony of Judge Hastings at 3150.

322. On September 18, 1981, William Borders and Madeline Petty flew from Las Vegas, Nevada to Washington National Airport.

Borders did not leave Washington National Airport. He departed at 9:20 p.m. for Miami, Florida, via Eastern Airlines flights 459 and 655.

Stipulation 90.
House Exhibits 41, 42, 75, 76.

323. On September 19, 1981, William Borders registered at the Miami International Airport Hotel at 2:25 a.m.

Stipulation 91.

324. On September 19, 1981, William Borders and H. Paul Rico met at the Miami International Airport Hotel at approximately 10:00 a.m. Rico wore a body recorder and a tape recording was made of the meeting.

Testimony of William Murphy at 574.
Testimony of H. Paul Rico at 753, 762.
House Exhibits 43a and b.

325. During their meeting on September 19, 1981, at the Miami International Airport, H. Paul Rico told William Borders that Judge Hastings had appeared at the Fontainebleau Hotel as promised, and that Rico had the bribe money in a locker at the airport.

House Exhibits 43a and b.

326. During their meeting on September 19, 1981, at the Miami International Airport, H. Paul Rico paid William Borders $25,000 in cash as a down payment on the bribe. The $25,000 was paid in $100 bills. The FBI had recorded each bill's serial number.

Testimony of William Murphy at 574, 580.

327. During their meeting on September 19, 1981, at the Miami International Airport, William Borders gave H. Paul Rico his business telephone number.

Testimony of William Murphy at 582.

328. During their meeting on September 19, 1981, at the Miami International Airport, William Borders and H. Paul Rico agreed that the balance of the bribe money would be paid "as soon as the other [was] done", meaning as soon as the order returning the forfeited

property was signed. The order was to be issued within ten days of the September 19, 1981 meeting.

Testimony of William Murphy at 583, 748.
Testimony of H. Paul Rico at 763.
House Exhibits 43a and b.

329. During their meeting on September 19, 1981, at the Miami International Airrort, William Borders and H. Paul Rico agreed to meet again at the Miami International Airport, on October 3, 1981, at which time the final installment of the bribe money would be paid.

Testimony of William Murphy at 583.
Testimony of H. Paul Rico at 763-764.
House Exhibits 43a and b.

330. On September 19, 1981, William Borders left Miami, Florida, for Washington, D.C. on Eastern Airlines flight 190, scheduled to depart the Miami International Airport at 10:55 a.m.

Stipulation 99.

331. On September 20 or 21, 1981, William Borders and Judge Hastings spoke on the telephone.

Stipulation 288.
Testimony of Judge Hastings at 3448.

332. The Government never found the $25,000 paid to William Borders by H. Paul Rico as a down payment on the Romano bribe.

Testimony of William Murphy at 740.

333. On Thursday evening, October 1, 1981, a United States District Court Judge for the District of Washington, D.C. authorized electronic surveillance of William Borders' business phone.

Testimony of William Murphy at 582.

334. On Friday evening, October 2, 1981, a United States District Court Judge for the District of Washington, D.C. authorized electronic surveillance of William Borders' home phone.

Testimony of William Murphy at 583.

335. Every conversation H. Paul Rico had with William Borders, either on the telephone or in person, was recorded.

Testimony of H. Paul Rico at 753.

336. As of October 2, 1981, Judge Hastings had not issued an order vacating the previous forfeiture of Thomas and Frank Romano's property.

Testimony of William Murphy at 584.

337. On October 2, 1981, H. Paul Rico made four calls to William Borders' law offices, all of which were recorded pursuant to the federal wiretap authorization. The purpose of the calls was to determine what had happened to the Romano order which was to be issued by Judge Hastings and was to return a substantial amount of Romano property previously ordered forfeited by Judge Hastings. Rico reached Borders on the fourth call.

Stipulation 101.
Testimony of William Murphy at 584.
House Exhibits 44a and b, 45a and b, 48a and b, and 50a and b.

338. On Friday, October 2, 1981, at approximately 3:00 p.m., William Borders was out of his law office but he arranged to have "Frank's" (H. Paul Rico's) call put through to him at another office.

Stipulation 103.
House Exhibits 47a and b, 49a and b.

339. On October 2, 1981, beginning at 3:10 p.m. William Borders and H. Paul Rico spoke with each other by telephone and Rico informed Borders that the Romano forfeiture order had not yet been issued. The call was recorded pursuant to the federal wiretap authorization.

House Exhibits 50a and b.
Testimony of William Murphy at 586.

340. During their October 2, 1981 telephone conversation, beginning at 3:10 p.m., William Borders and H. Paul Rico agreed to cancel their previously scheduled meeting for October 3, 1981.

House Exhibits 50a and b.

341. During their October 2, 1981 telephone conversation, beginning at 3:10 p.m., H. Paul Rico asked William Borders to call him that night with information on the Romano forfeiture order. Borders replied that he did not know whether he would be able to "find out . . . because of the time." Borders suggested that Rico call again two days later, on Sunday, October 4, 1981.

House Exhibits 50a and b.
Testimony of William Murphy at 587-588.

342. On October 2, 1981, at 4:50 p.m., William Borders' secretary called Judge Hastings' chambers and was told that the judge had left for the day. The call was recorded pursuant to the federal wiretap authorization.

Stipulation 107.
House Exhibits 51a and b.

343. On October 4, 1981, at 9:39 a.m., H. Paul Rico called William Borders. Rico inquired about the Romano forfeiture order and Borders responded that he had not been able to talk to anybody. Borders suggested that Rico call again the next day at Borders' office. The call was recorded pursuant to the federal wiretap authorization.

House Exhibits 52a and b.

344. On the afternoon of October 4, 1981, William Borders called Judge Hastings' home.

Stipulation 109.
House Exhibit 156 at 1846.
Testimony of Judge Hastings at 3161.

345. On October 5, 1981, Judge Hastings instructed Jeffrey Miller to finish the Romano forfeiture order that day.

Testimony of Jeffrey Miller at 1034.
Testimony of Judge Hastings at 3240, 3452.

346. Prior to October 5, 1981, Judge Hastings had never asked Jeffrey Miller to prepare an order in the Romano case that same day.

Testimony of Jeffrey Miller at 1035.

347. On October 5, 1981, Jeffrey Miller left Judge Hastings' Miami chambers and drove to his home in order to work on the Romano forfeiture order. It was a 45 minute drive from the Miami chambers to Jeffrey Miller's home.

Testimony of Jeffrey Miller at 1036.

348. On October 5, 1981, Jeffrey Miller told Betty Williams that he would have an order for her to type the next day. It was Ms. Williams' impression that Miller wanted her to complete the order the next day with some dispatch.

Testimony of Betty Williams at 2749-2750.

349. Prior to his departure from Judge Hastings' chambers, Jeffrey Miller did not ask Betty Williams to reserve time to help finish any pending matter, other than the Romano forfeiture order issued on October 6, 1981.

Testimony of Betty Williams at 2761.

350. On October 5, 1981, at 4:22 p.m., William Borders and H. Paul Rico spoke to each other by telephone and the conversation was recorded pursuant to a federal wiretap authorization.

Stipulation 115.
House Exhibits 53a and b.

351. During their October 5, 1981 telephone conversation beginning at approximately 4:22 p.m., William Borders told H. Paul Rico that the Romano forfeiture order had not gone out yet, but it had been "taken care of" and would probably go out that day or first thing the next morning.

House Exhibits 53a and b.
Testimony of William Murphy at 601.

352. During their October 5, 1981 telephone conversation, beginning at approximately 4:22 p.m., William Borders told H. Paul Rico, "Your friend should tell you something. Where you went

before," i.e., Rico should hear about the issuance of the forfeiture order from his lawyer. Borders then told Rico to call when Rico received the order.

House Exhibits 53a and b.
Testimony of H. Paul Rico at 766-769.

353. On October 5, 1981, at 5:12 p.m., William Borders and Judge Hastings had a telephone conversation, which was recorded pursuant to a federal wiretap authorization.

Stipulation 117.
House Exhibits 54a and b.

354. The October 5, 1981, telephone conversation between Judge Hastings and William Borders, on its face, is about "letters for Hemp". Judge Hastings told Borders that he had "drafted all those ah, ah, letters, ah, for Hemp." Judge Hastings then asked Borders whether he had heard from Pride after Borders and the judge had talked. Borders said he had. Judge Hastings twice confirmed that he understood. Borders then stated that he had talked to Pride and Pride wrote "some things down for me." Judge Hastings responded that he understood. Borders went on to explain, "I was supposed to go back and get some more things." Judge Hastings again confirmed that he understood. Judge Hastings then stated "[w]ell then, there's no great big problem at all," and told Borders that he would send the letters to Columbia in the morning.

House Exhibits 54a and b.

*355. In his conversation with William Borders on October 5, 1981, in which Judge Hastings alleges he was calling to get information from Borders concerning Pride's financial situation, Judge Hastings did not get the information he claims he was seeking. Nor did Judge Hastings follow up in his conversation with Borders to obtain even preliminary figures concerning Pride's financial situation.

Testimony of Judge Hastings at 3460-61, 3567-68.

*356. In spite of the fact that he did not get the information which he claimed he needed for the letters, Judge Hastings indicated at the conclusion of his October 5, 1981 conversation with William Borders that he would send the letters off to Columbia the next day.

Testimony of Judge Hastings at 3569-70.

357. Judge Hastings did not call William Borders to inform him that he had changed his mind and would not send out the letters as he had promised in the phone conversation of October 5, 1981. Nor did he inform him of that fact when he spoke with him on October 8, 1981, nor when he spent the better part of the morning with him on October 9, 1981.

Testimony of Judge Hastings at 3468-69.

358. Dr. Roger Shuy is a Professor of Linguistics and the Chairman of the Department of Linguistics at Georgetown University. He is an expert in linguistics and conversation analysis.

Testimony of Roger Shuy at 869-874.
House Exhibit 122.

359. Dr. Roger Shuy was asked by the House of Representatives to determine whether or not the October 5, 1981, conversation between William Borders and Judge Hastings is in code. No member of the House of Representatives, nor any member of the House impeachment staff, identified for Dr. Shuy any portions of the conversation believed to be in code.

Testimony of Roger Shuy at 875.

360. To conduct his analysis of the October 5, 1981 conversation between Judge Hastings and William Borders, Dr. Roger Shuy reviewed the tape and transcript of that conversation, the tape and transcript of a conversation between Judge Hastings and William Borders recorded on October 8, 1981, ten other taped conversations between Borders, William Dredge and/or H. Paul Rico, and pages 2173 through 2192 of Judge Hastings' testimony at his criminal trial. This portion of the trial transcript covers Judge Hastings' explanation of the October 5, 1981 conversation with William Borders.

Testimony of Roger Shuy at 876.

*361. Based on his review of the October 5, 1981 conversation, the eleven other tape recordings, and the portion of Judge Hastings' testimony at his criminal trial, Dr. Roger Shuy concluded, in his expert opinion, that the October 5, 1981 conversation between Judge Hastings and William Borders is in code. In the opinion of Dr. Shuy, the conversation is not about "letters for Hemp," but about something else.

Testimony of Roger Shuy at 878-880, 995.

362. Dr. Roger Shuy used three standard analytical linguistic procedures to determine whether the October 5, 1981 conversation between Judge Hastings and William Borders is in code: speech act analysis, syntax analysis and discourse analysis.

Testimony of Roger Shuy at 873, 882.

363. Speech act analysis determines the meaning of words in a particular context.

Testimony of Roger Shuy at 882.

364. Syntax analysis determines whether the sentences used in a conversation comply with the norms of English syntax.

Testimony of Roger Shuy at 882.

365. Discourse analysis is the study of language in units larger than a sentence.

Testimony of Roger Shuy at 882-883.

*366. One linguistic characteristic associated with coded conversations is the use of pause fillers (such as "ah"), repeated words and false starts around topic words in a conversation. This characteristic indicates that the participants are taking extreme care when choosing the significant words in a conversation.

Testimony of Roger Shuy at 884, 886-887.

*367. At nine different times in the October 5, 1981 conversation, Judge Hastings and William Borders use pause fillers, repeated words or false starts, which occur both before and after the topic words in the conversation.

Testimony of Roger Shuy at 885, 888.
House Exhibit 123.

*368. In the October 8, 1981 conversation between Judge Hastings and William Borders there is only one false start and one repeated word. The October 8, 1981 conversation is twice as long as the October 5, 1981 conversation and conveys more complex information.

Testimony of Roger Shuy at 885-886, 895.
House Exhibit 61b.

*369. A second linguistic characteristic associated with coded conversations are logical inconsistencies. A logical inconsistency is when a particular part of a conversation, when taken at face value, does not make sense or fails to comply with the rules of English syntax.

Testimony of Roger Shuy at 889-890.

*370. In the October 5, 1981 conversation, there are logical inconsistences in how Judge Hastings and William Borders respond to one another and in their choice of words. For example, William Borders' use of the phrase "and then I was supposed to go back and get some more things" is not consistent with rules of English syntax. Judge Hastings' decision to send out the letters for Hemp, even though William Borders has just stated that he is supposed to go back to Hemphill Pride and get more information, is illogical.

Testimony of Roger Shuy at 889-893.
House Exhibit 123.

371. The October 8, 1981 conversation between Judge Hastings and William Borders does not contain any logical inconsistencies.

Testimony of Roger Shuy at 893.
House Exhibit 61b.

*372. A third linguistic characteristic associated with coded conversations is the use of repeated confirmations of understanding when the ideas being conveyed in the conversation are not complex. Repeated confirmations are the means by which the participants convey to one another that they understand the meaning of the coded conversation.

Testimony of Roger Shuy at 893-894.

*373. In the October 5, 1981 conversation, Judge Hastings repeatedly confirms that he understands the meaning of what William Borders has said, even though Borders is not conveying complex information. He confirms that he understands Borders' meaning four different times in the conversation.

Testimony of Roger Shuy at 894-895.
House Exhibit 123.

*374. In the October 8, 1981 conversation, Borders twice confirms that he understands detailed information conveyed by Judge Hastings. The information involves an airline flight number, a time of arrival and a hotel. This is where a linguist expects to find a repeated confirmation. There are no statements by Judge Hastings confirming that he understands William Borders in the October 8, 1981 conversation.

Testimony of Roger Shuy at 895.
House Exhibit 61b.

*375. The clustering of all the linguistic characteristics associated with coded conversations -- the use of pause fillers, false starts and repeated words near topic words in the conversation, the logical inconsistencies, and the repeated confirmations of understanding -- indicates that the October 5, 1981 conversation between Judge Hastings and William Borders is in code.

Testimony of Roger Shuy at 883.

*376. The linguistic characteristics associated with coded conversations are found much less frequently, if at all, in the October 8, 1981 conversation between Judge Hastings and William Borders.

Testimony of Roger Shuy at 885, 893, 895.

377. On October 6, 1981, Jeffrey Miller returned to chambers and gave the final draft of the Romano forfeiture order to Betty Williams to type.

Testimony of Betty Williams at 2729-2730.
Testimony of Jeffrey Miller at 1036.

378. On October 6, 1981, with respect to the Romano forfeiture order, Judge Hastings told Marilyn Carter, "Sorry for the rush, but this must go out today."

Testimony of Marilyn Carter at 2820.
Testimony of Judge Hastings at 3455.

*379. On October 6, 1981, Marilyn Carter felt pressure from Judge Hastings to drop other work and to get the Romano forfeiture order out that day.

Testimony of Marilyn Carter at 2822.

*380. On October 6, 1981, with respect to the Romano forfeiture order, Marilyn Carter could not understand why there was such a rush. She found the rush very unusual because the order did not involve a time limit. Marilyn Carter first made these statements to the FBI agents who interviewed her three days later, on October 9, 1981.

Testimony of Marilyn Carter at 2820.

381. On October 6, 1981, an order reversing the forfeiture of $845,939.00 of the $1,162,016.00 of Thomas and Frank Romano's property, which had previously been ordered forfeited, was signed by Judge Hastings and mailed out.

Stipulation 118.

382. On October 6, 1981, the Romano forfeiture order was mailed special delivery.

Testimony of Marilyn Carter at 2782, 2831.
Testimony of James Deichert at 88.
House Exhibit 8.

*383. One reason for Marilyn Carter's mailing the Romano forfeiture order special delivery on October 6, 1981, was the pressure in chambers to get the order out that day and Judge Hastings' statement that the order must go out that day.

Testimony of Marilyn Carter at 2835.

384. Prior to October 6, 1981, James Deichert had received from Judge Hastings' court numerous notices and other correspondence pertaining to the Romano case. Of those, only the October 6, 1981 forfeiture order was mailed special delivery.

Testimony of James Deichert at 88-89.

385. The Romano forfeiture order was the only order that went out from Judge Hastings' chambers on the evening of October 6, 1981.

Testimony of Marilyn Carter at 2836.

386. There was no legal deadline requiring the issuance of the Romano order reversing a substantial portion of the earlier forfeiture in early October, 1981, or at any other particular time.

Testimony of James Deichert at 89.
Testimony of Jeffrey Miller at 1035.
Testimony of Judge Hastings at 3455-56.

387. Between July 8, 1981, the date of the argument on the motion to reconsider the May 4, 1981 Romano forfeiture order, and October 6, 1981, the date the order was issued, there was no additional briefing or argument by the parties on the forfeiture issue in the Romano case.

Testimony of James Deichert at 87.
Testimony of Judge Hastings at 3456.

388. The Romano order issued by Judge Hastings on October 6, 1981, was inconsistent with the ruling the judge had announced from the bench on the forfeiture issue on July 8, 1981.

House Exhibits 6 and 9.
Testimony of Judge Hastings at 3456.

389. Judge Hastings instructed Jeffrey Miller to state in the October 6 order that the judge was in disagreement with the decisions which required the return of the forfeited property.

Testimony of Judge Hastings at 3234.

*390. James Deichert, the prosecutor in the Romano case, was stunned by the October 6, 1981 order reversing a substantial part of the forfeiture. He was stunned because there had been no additional argument or briefing on the issue since the July 8, 1981 hearing, and the law was the same on October 6, 1981 as it had been on July 8, 1981 when Judge Hastings had affirmed his May 4, 1981 forfeiture of Romano property, despite the Fifth Circuit's decision in Martino.

Testimony of James Deichert at 90.

*391. Between the time of the July 8, 1981 hearing and the issuance of the order on October 6, 1981, James Deichert, the prosecutor in the Romano case, had called Judge Hastings' chambers and spoken to Jeffrey Miller, Judge Hastings' law clerk, three or four times to inquire about the order. He had done so because based on Judge Hastings' ruling on July 8, 1981, he believed the written order

would distinguish the Martino decision and would be favorable to the Government on the forfeiture issue.

Testimony of James Deichert at 116 and 125.

392. In October 1981, Jeffrey Miller did not know William Borders. Prior to October 9, 1981, he had not heard Borders' name.

Testimony of Jeffrey Miller at 1040.

393. On October 7, 1981, at 12:19 p.m., William Borders and H. Paul Rico spoke by telephone, and the conversation was recorded pursuant to a federal wiretap authorization.

House Exhibits 56a and b.
Testimony of William Murphy at 601.

394. During their October 7, 1981 telephone conversation, beginning at approximately 12:19 p.m., William Borders told H. Paul Rico that the Romano forfeiture order had gone out the previous morning.

House Exhibits 56a and b.
Testimony of William Murphy at 602.

395. On October 7, 1981, at 3:14 p.m., William Borders called William Dredge and the conversation was recorded pursuant to a federal wiretap authorization. During that conversation, Borders asked Dredge to go out and call him back.

House Exhibits 58a and b.

396. On October 7, 1981, at 3:34 p.m., William Dredge called William Borders back and the conversation was recorded pursuant to the federal wiretap authorization. During that conversation, Dredge gave Borders a phone number, at which time Borders said he would call Dredge back.

House Exhibits 59a and b.

***397. Two or three weeks after William Dredge introduced William Borders to H. Paul Rico, Borders called Dredge and told him that he had bad vibes because Rico was pushing him. Dredge told Borders**

that if Borders had any reservations, he should walk away from the deal. Borders stated that Rico was "100 percent." Dredge responded that he had been told that Rico was supposed to be fine.

Testimony of William Dredge at 186.

398. On October 7, 1981, at 7:39 p.m., William Borders and H. Paul Rico spoke by telephone and the conversation was recorded pursuant to the federal wiretap authorization.

Stipulation 123.
House Exhibits 60a and b.

399. During their October 7, 1981 telephone conversation, beginning at approximately 7:39 p.m., H. Paul Rico told William Borders that "everything [was] fine", meaning that the Romano forfeiture order had been received. Borders and Rico agreed that Rico would come to Washington, D.C. with the final bribe payment on Thursday or Friday, October 8 or 9, 1981.

House Exhibits 60a and b.
Testimony of William Murphy at 602-603.

400. On October 8, 1981, at 9:37 a.m., William Borders and Judge Hastings spoke by telephone and the conversation was recorded pursuant to a federal wiretap authorization.

Stipulation 125.
House Exhibits 61a and b.
Testimony of Judge Hastings at 3178.

401. During their October 8, 1981 telephone conversation, beginning at 9:37 a.m., Judge Hastings told William Borders that he would be arriving at Washington National Airport the next morning at 10:40 on Eastern flight 130.

Stipulation 126.
House Exhibits 61a and b.

402. In the late summer of 1981, the National Bar Association planned a testimonial dinner/boat ride in honor of William Borders, the immediate past president of the organization.

Stipulation 127.

403. Judge Hastings was a co-sponsor of the testimonial dinner/boat ride organized by the National Bar Association in honor of William Borders.

Stipulation 128.
Testimony of Judge Hastings at 3125.

404. The National Bar Association dinner/boat ride in honor of William Borders was scheduled for October 9, 1981.

Stipulation 129.

405. On October 9, 1981, at approximately 10:40 a.m., William Borders met Judge Hastings at gate 20 of the Washington National Airport.

Stipulation 130.
House Exhibit 129.
Testimony of Judge Hastings at 3181.

406. After picking up Judge Hastings at the Washington National Airport on the morning of October 9, 1981, William Borders drove with Judge Hastings to the L'Enfant Plaza Hotel, arriving at approximately 10:50 a.m.

Stipulation 131.
Testimony of Judge Hastings at 3181.

407. A suite and an adjoining room at the L'Enfant Plaza Hotel had been reserved for William Borders and Judge Hastings, respectively, beginning October 9, 1981.

Stipulation 132.
Testimony of Judge Hastings at 3182.

408. On October 9, 1981, Judge Hastings was registered for room 11239 of the L'Enfant Plaza Hotel.

Stipulation 175.

409. After arriving at the L'Enfant Plaza Hotel on October 9, 1981, Judge Hastings sent his suit to the hotel valet service.

Stipulation 167.
Testimony of Judge Hastings at 3182-83.

410. While at the L'Enfant Plaza Hotel in the morning of October 9, 1981, Judge Hastings and William Borders briefly visited Hemphill Pride in Pride's room at the L'Enfant Plaza Hotel.

Testimony of Hemphill Pride at 1193.
Testimony of Judge Hastings at 3183.

411. Judge Hastings and Hemphill Pride have known each other for thirty years, since 1959. They were roommates in law school and were very good friends. Judge Hastings is godfather to Pride's son, and Pride is godfather to Judge Hastings' son.

Testimony of Hemphill Pride at 1162.
Testimony of Judge Hastings at 3077, 3583.

412. Hemphill Pride has known William Borders since 1970 or 1971. They met through National Bar Association activities and became social friends.

Testimony of Hemphill Pride at 1163.

413. In the late summer and early fall of 1981, Hemphill Pride was indefinitely suspended from the practice of law by the Supreme Court of the State of South Carolina.

Testimony of Hemphill Pride at 1164.

414. Hemphill Pride was indefinitely suspended from the practice of law in South Carolina due to his December 1977 conviction in U.S. District Court of misusing rents from a HUD sponsored housing project. On December 28, 1977, Pride had been sentenced to three years in prison. He served one year in prison and two months in a half-way house. Pride was released from prison in March, 1981.

Testimony of Hemphill Pride at 1164-1165.

415. Hemphill Pride was suspended from the practice of law by order of the Chief Justice of the South Carolina Supreme Court. Pride petitioned the South Carolina Supreme Court for a hearing, which he received. The South Carolina Supreme Court then reversed the order of the Chief Justice, and referred the matter to the South Carolina Bar Association for a hearing. The South Carolina

Bar Association conducted the hearing, after which it voted to disbar Pride from the practice of law in South Carolina. Pride appealed that decision to the South Carolina Supreme Court, and on May 11, 1981, the Supreme Court granted the indefinite suspension.

Testimony of Hemphill Pride at 1165-1166.

416. Neither Judge Hastings nor William Borders directly assisted Hemphill Pride in the proceedings leading up to the May 11, 1981 decision by the South Carolina Supreme Court granting the indefinite suspension. Neither Judge Hastings nor Borders were character witnesses during the hearings. Nor did they write letters on Pride's behalf.

Testimony of Hemphill Pride at 1252.

417. Judge Hastings never filed any pleadings on behalf of Hemphill Pride with regard to Pride's attempts to be reinstated to the bar. Nor did he testify in Pride's behalf on that matter.

Testimony of Judge Hastings at 3478.

418. Pursuant to Rule 37 of the Miscellaneous Rules of the South Carolina Supreme Court, Hemphill Pride was not eligible to apply for readmission to the South Carolina bar until two years after the May 11, 1981 order granting the indefinite suspension. In the late summer and early fall of 1981, Hemphill Pride knew that he was ineligible to reapply for reinstatement until 1983.

House Exhibit 125.
Testimony of Hemphill Pride at 1167.

419. Despite the fact that he was not eligible for reinstatement until 1983, in the summer of 1981 Hemphill Pride took steps to pave the way for readmission by speaking to the Chief Justice of the South Carolina Supreme Court and some other judges whom Pride had criticized.

Testimony of Hemphill Pride at 1168.

420. In the summer of 1981, Hemphill Pride discussed with Judge Hastings and William Borders the steps he should take to make amends with particular judges in South Carolina, including the Chief Justice of the South Carolina Supreme Court.

Testimony of Hemphill Pride at 1168-1170.

421. In September, 1981, Hemphill Pride met with Chief Justice Lewis of the South Carolina Supreme Court to make amends with respect to critical remarks Pride had previously made. At that meeting, Pride's reinstatement to the South Carolina bar was not discussed.

Testimony of Hemphill Pride at 1171-1174.

422. In July, 1980, when in prison, Hemphill Pride asked Judge Hastings to solicit funds on Pride's behalf in order for Pride to hire an attorney to represent him on a post-conviction relief petition. Pride made this request to Judge Hastings in a letter dated July 18, 1980.

Testimony of Hemphill Pride at 1178-1179.
House Exhibit 126.

423. Hemphill Pride and Judge Hastings addressed each other as "Blood" because of their close relationship, which was similar to being brothers.

Testimony of Hemphill Pride at 1179.

424. Judge Hastings did not respond in writing to Hemphill Pride's July 18, 1980 letter. Thereafter, Pride called Judge Hastings several times from prison. When he reached Judge Hastings, the judge told Pride that he could not solicit funds on Pride's behalf because it was inappropriate for a federal judge to take such action.

Testimony of Hemphill Pride at 1180-1181.
Testimony of Judge Hastings at 3175, 3478-79.

425. In response to Hemphill Pride's request, Judge Hastings declined to solicit funds on behalf on Pride during Pride's incarceration in 1980.

Testimony of Judge Hastings at 3478-79.
Testimony of Hemphill Pride at 1180.

426. After his release from prison in March 1981, Hemphill Pride had two jobs. He worked as a consultant for the Columbia Urban League and for Dennis and Associates.

Testimony of Hemphill Pride at 1183-1184.

427. On October 9, 1981, Hemphill Pride was in Washington, D.C. with his wife and two year old son, in order to attend the National Bar Association affair to be held that evening in honor of William Borders.

Testimony of Hemphill Pride at 1192, 1195.

428. During the morning of October 9, 1981, when Judge Hastings and William Borders briefly visited Hemphill Pride in Pride's room at the L'Enfant Plaza Hotel, it was the first time Pride had seen Judge Hastings since his release from prison in March, 1981.

Testimony of Hemphill Pride at 1193.

429. On October 9, 1981, Borders and Judge Hastings left the L'Enfant Plaza Hotel at approximately 11:17 a.m. and proceeded to William Borders' car, where Judge Hastings placed a briefcase in the trunk. They then drove to the Superior Court of the District of Columbia, 500 Indiana Ave., N.W., Washington, D.C., arriving at 11:22 a.m. and departing at 11:29 a.m.; they then drove to W & W Liquors, 1549 7th St. N.W., Washington, D.C., arriving at 11:38 a.m. and departing at 11:42 a.m.; and then drove to Borders' law office at 1621 New Hampshire Ave., N.W. Washington, D.C., arriving at approximately 11:53 a.m.

Stipulation 133.
House Exhibit 129.
Testimony of Judge Hastings at 3185-86.

430. At approximately 11:53 a.m. on October 9, 1981, Borders parked his car at the rear of his office at 1621 New Hampshire Ave., N.W., Washington, D.C.

House Exhibit 129.

431. H. Paul Rico, posing as Frank Romano, arrived in Washington, D.C. on October 8, 1981, for the purpose of delivering the remainder of the bribe payment to William Borders. The FBI had $125,000 in $100 bills and recorded each bill's serial number.

Testimony of William Murphy at 603, 605.

432. At 11:13 a.m. on October 9, 1981, H. Paul Rico, impersonating Frank Romano, called William Borders' law office and left a message at William Borders' office to let Borders know that he was in Washington, D.C.

Testimony of William Murphy at 606.
Stipulation 136.
House Exhibit 62a and b.

433. On October 9, 1981, H. Paul Rico was staying at the Twin Bridges Marriott Hotel. In his room, the FBI installed a camera and voice recording equipment.

Testimony of William Murphy at 607, 608.
House Exhibits 64a and b.

434. On October 9, 1981, at 11:46 a.m., William Borders called H. Paul Rico at the Twin Bridges Marriott Hotel. The call was recorded pursuant to a federal wiretap authorization.

House Exhibits 64a and b.
Testimony of William Murphy at 606.

435. When William Borders called H. Paul Rico on October 9, 1981, at 11:46 a.m., Rico told Borders that he had "brought all the necessary papers." They agreed to meet at the Twin Bridges Marriott Hotel in about an hour.

House Exhibit 64a and b.

436. On October 9, 1981, William Borders left his office at approximately 12:02 p.m. and drove to the Twin Bridges Marriott Hotel, arriving at H. Paul Rico's room less than an hour after they had talked on the telephone.

House Exhibit 66.

437. On October 9, 1981, when H. Paul Rico answered William Borders' knock at the door at the Marriott Hotel, Borders did not enter the room. He asked Rico, "You got it with you?" Rico told him that "it" was in the room and Borders said, "Get it, I wanna take a ride."

Testimony of William Murphy at 608.
House Exhibits 65a and b.

438. On October 9, 1981, when William Borders and H. Paul Rico got into Borders' car, Rico placed a bag containing $125,000 on the seat between them.

Stipulation 142.

439. On October 9, 1981, the FBI pulled over the car being driven by William Borders as soon as Borders started to drive away from the parking lot of the Twin Bridges Marriott Hotel in Arlington, Virginia. When Borders saw the FBI car, and heard its siren, he said to Rico, "We're busted."

House Exhibits 65a and b, 66.

440. On October 9, 1981, at 12:40 p.m., William Borders was placed under arrest by FBI agents, and transported back to room 103 of the Twin Bridges Marriott Hotel.

Testimony of William Murphy at 611.
House Exhibit 66.

*441. Prior to October 9, 1981, the Public Integrity Section of the U.S. Department of Justice, in consultation with the FBI, decided to arrest William Borders and to seek his cooperation some time after he received the final $125,000 payment on the bribe. On October 9, 1981, the Public Integrity Section, in consultation with the FBI, decided to make the arrest as William Borders was driving away from the Marriott Hotel with H. Paul Rico because the FBI did not know where Borders was going with Rico and Rico was not wearing a transmitter.

Testimony of William Murphy 605, 609, 679-81.

*442. The Public Integrity Section and the FBI did not believe that William Borders would pass any of the $125,000 directly to Judge Hastings. The Government believed that Borders and Judge Hastings were sophisticated and would pass the money in a manner that could not be traced.

Testimony of William Murphy at 740, 747.

443. Following his arrest on October 9, 1981, at 1:18 p.m., William Borders requested and received permission to telephone his attorney, John Shorter. Borders then made arrangements for Shorter to come to the Twin Bridges Marriott Hotel.

Stipulation 145.
House Exhibit 66.

444. On Friday, October 9, 1981, at 1:31 p.m., attorney John Shorter arrived at room 103 of the Twin Bridges Marriott Hotel and thereafter spoke privately with William Borders for several minutes.

Stipulation 146.
House Exhibit 66.

445. On Friday, October 9, 1981, after his arrest and after consulting with his attorney, William Borders stated that he did not wish to cooperate with the Government.

Testimony of William Murphy at 727.

446. At 1:56 p.m., on October 9, 1981, William Borders was escorted by FBI agents from the Twin Bridges Marriott Hotel to the Washington FBI field office. At 3:40 p.m., FBI agents took Borders to the United States Magistrate's Office in Alexandria, Virginia. Following a hearing before United States Magistrate W. Harris Grimsley, Borders was remanded to the custody of the United States Marshall.

House Exhibit 66.

447. On Friday, October 9, 1981 at 1:55 p.m., FBI Special Agent William Murphy and two other FBI agents left the Twin Bridges Marriott Hotel for the law office of William Borders. Special Agent Murphy went to Borders' office in order to locate Judge Hastings. The other two agents were to serve a subpoena for documentary records, including travel records and telephone message records. The FBI agents arrived at Borders' office at approximately 2:20 p.m to 2:30 p.m. and found the front door locked.

Testimony of William Murphy at 613-16.

448. On October 9, 1981, at 2:40 p.m., Cynthia Rogers arrived at William Borders' office and let the FBI agents into the building. At that time, Judge Hastings was not at Borders' office.

Testimony of William Murphy at 614.

*449. On October 9, 1981, between 2:20 p.m. and 2:45 p.m., Cynthia Rogers told the FBI agents that she was not sure if she should accept service of the subpoena.

Testimony of William Murphy at 615.

450. On October 9, 1981, between 2:20 p.m. and 2:45 p.m., Cynthia Rogers called John Shorter, who was William Borders' attorney. When she completed her conversation with Shorter, at approximately 2:45 p.m., Special Agent Murphy asked to speak to Shorter. At that time Special Agent Murphy spoke to Shorter and told him that the FBI wanted to interview Judge Hastings and asked Shorter if he knew where Judge Hastings could be located.

Testimony of William Murphy at 615.

451. In their telephone conversation on October 9, 1981, at approximately 2:45 p.m., Special Agent William Murphy asked John Shorter to give Murphy's name, another FBI agent's name and the Washington FBI Field Office telephone number to whoever might be able to get in touch with Judge Hastings.

Testimony of William Murphy at 615.

452. In an attempt to locate Judge Hastings, on October 9, 1981, the FBI agents left William Borders' office and proceeded to the L'Enfant Plaza Hotel. They arrived at the hotel at approximately 3:00 p.m.

Testimony of William Murphy at 616.

453. At the L'Enfant Plaza Hotel, at approximately 3:00 p.m., on October 9, 1981, the FBI agents were not able to locate Judge Hastings. They inquired at the front desk and learned Judge Hastings' room number. Using the house phone, they called Judge Hastings' room several times and received no response. The FBI agents then went up to Judge Hastings' room and knocked on the door. There was no response. One of the FBI agents also surveyed

the L'Enfant Plaza lobby and the bar/restaurant area in the hotel. At approximately 3:35 p.m., Special Agent William Murphy and the other agents left the hotel.

Testimony of William Murphy at 616.

454. Following the arrest of William Borders on October 9, 1981, FBI agents in the Miami field office were directed to conduct interviews of Patricia Williams and the personnel in Judge Hastings' chambers, and to serve a grand jury subpoena for office records in Judge Hastings' chambers.

Testimony of John Simmons at 1365.
Testimony of Wendy Loucks at 1351.

455. On October 9, 1981, Special Agent John Simmons was to interview Judge Hastings' courtroom clerk and to serve a subpoena for documentary records. Special Agent Simmons was also in charge of the FBI agents who were assigned to conduct simultaneous interviews of the other members of Judge Hastings' staff.

Testimony of John Simmons at 1365.

456. John Simmons has been a Special Agent of the FBI for approximately 20 years. In 1981, he was assigned to the Miami field office.

Testimony of John Simmons at 1364.

*457. On October 9, 1981, at 2:50 p.m., the FBI agents arrived at Judge Hastings' Miami chambers to conduct interviews and to serve a subpoena for documentary records.

Testimony of John Simmons at 1366.
House Exhibit 139.

458. On October 9, 1981, the FBI agents conducted simultaneous interviews of the personnel at Judge Hastings' Miami chambers. It is the policy of the FBI to have two agents present during each interview.

Testimony of John Simmons at 1367, 1455.

459. On October 9, 1981, the FBI expected to find six or seven members of Judge Hastings' staff at his Miami chambers. When they arrived, only four members of Judge Hastings' staff were present.

Testimony of John Simmons at 1367.

460. On October 9, 1981, two of Judge Hastings' staff members were working in his Ft. Lauderdale chambers. Almost immediately after arriving at the Miami chambers, two FBI agents left for the Ft. Lauderdale chambers in order to locate the staff members working in that office.

Testimony of John Simmons at 1367-1368.

461. Judge Hastings' Ft. Lauderdale chambers is approximately 25 miles from his Miami chambers.

Testimony of John Simmons at 1368.

462. October 9, 1981 was a Friday.

House Exhibit 205.

463. On October 9, 1981, at approximately 3:00 p.m., it would have taken approximately one hour to drive from Judge Hastings' Miami chambers to his Ft. Lauderdale chambers.

Testimony of John Simmons at 1368.

464. In order to complete the interviews of Judge Hastings' staff, the FBI agents remained in Judge Hastings' Miami chambers for approximately two and one-half hours. During that time, Special Agent John Simmons also served the subpoena for documentary evidence.

Testimony of John Simmons at 1367, 1368-1369.

*465. On October 9, 1981, while the FBI agents were at Judge Hastings' Miami chambers, no person arrived trying to find Judge Hastings.

Testimony of Marilyn Carter at 2823.

466. On October 9, 1981, while being interviewed at Judge Hastings' Miami chambers, Marilyn Carter told the FBI agents that

Judge Hastings was interested in buying a house. She also stated that Judge Hastings had said that the reason he had not purchased a house was because he did not have the funds to do so.

Testimony of Marilyn Carter at 2828.

467. In October, 1981, Patricia Williams was an attorney employed by the Equal Employment Opportunity Commission in Miami, Florida, and the fiancee of Judge Hastings. She resided at 2401 N.W. 43rd Terrace, Lauderhill, Florida.

Stipulation 151.

*468. On October 9, 1981, FBI Special Agents Wendy Loucks and Lawrence Harrigan proceeded from the Miami FBI office to the office of Patricia Williams in downtown Miami, Florida, arriving shortly before 3:00 p.m. After locating Ms. Williams, the agents interviewed her, beginning at approximately 3:00 p.m. The interview lasted 40 to 45 minutes, ending at approximately 3:40 to 3:45 p.m.

Testimony of Wendy Loucks at 1351-1352, 1363.

469. On October 9, 1981, twenty minutes into the FBI interview, Patricia Williams was interrupted by the office receptionist, who told her that she had a telephone call from a client. The receptionist gave the name of the caller and said he was inquiring about an upcoming hearing. The name was not Judge Hastings. Ms. Williams took the call and was out of the FBI agents' presence for approximately two to five minutes. When she returned to the conference room, Ms. Williams' demeanor had not changed.

Testimony of Wendy Loucks at 1352-1354.

470. There were no other interruptions during the October 9, 1981 interview of Patricia Williams.

Testimony of Wendy Loucks at 1354.

471. On October 9, 1981, after leaving William Borders' office and making stops at several downtown shops, Judge Hastings returned to his room at the L'Enfant Plaza Hotel at approximately 1:00 p.m., and ordered lunch to be sent up by room service.

Testimony of Judge Hastings at 3188-90.

472. After Judge Hastings ordered room service at the L'Enfant Plaza Hotel on October 9, 1981, Hemphill Pride came to Judge Hastings' room. Judge Hastings then ordered additional food from room service and the two men ate lunch together.

Testimony of Hemphill Pride at 1195-1196.
Testimony of Judge Hastings at 3190-91.

*473. During the afternoon of October 9, 1981, after eating together in Judge Hastings' room, Judge Hastings and Hemphill Pride went downstairs to a lounge in the L'Enfant Plaza Hotel and had two drinks. While in the lounge, Judge Hastings and Pride discussed the National Bar Association event scheduled for that evening and their families. There was no discussion of Judge Hastings helping Pride obtain reinstatement to the South Carolina bar or obtain financial assistance. Nor was there any discussion of the letters which Judge Hastings alleges he had drafted to implement his assistance to Pride.

Testimony of Hemphill Pride at 1196-1197, 1295.
Testimony of Judge Hastings at 3191.

474. On October 9, 1981, after finishing their drinks in a lounge at the L'Enfant Plaza Hotel, Judge Hastings and Hemphill Pride returned to their respective hotel rooms.

Testimony of Hemphill Pride at 1198.
Testimony of Judge Hastings at 3191, 3390.

475. On October 9, 1981, as soon as he reached his room at the L'Enfant Plaza Hotel after having drinks with Judge Hastings, Hemphill Pride received a call from John Shorter. Shorter asked Pride if he knew where Judge Hastings was located. Pride responded that he did, and told Shorter that Judge Hastings was either in his hotel room or on his way there. Shorter then asked Pride to contact Judge Hastings and tell him that two FBI agents wanted to interview the judge because William Borders had been arrested. Shorter told Pride that Borders had been charged with bribery and that the alleged bribe had occurred in Judge Hastings' courtroom. Shorter also stated that he was on his way to arrange a bond for Borders' release.

Testimony of Hemphill Pride at 1199-1200, 1272.

*476. During the phone call on October 9, 1981 in which Hemphill Pride learned of William Borders' arrest, John Shorter gave Pride the names of two FBI agents, Murphy and Bird, and a telephone number where the agents could be reached. Shorter also recommended a Washington, D.C. attorney, Ken Mundy, to represent Judge Hastings.

Testimony of Hemphill Pride at 1200, 1272.

477. On October 9, 1981, immediately after receiving the phone call from John Shorter in which he learned of William Borders' arrest, Hemphill Pride called Judge Hastings' room and asked the judge to come to his room right away. After making the call, Pride took his two year old son and went to meet Judge Hastings at the elevator.

Testimony of Hemphill Pride at 1200.
Testimony of Judge Hastings at 3192.

478. On October 9, 1981, when Hemphill Pride met Judge Hastings at the elevator, he relayed the information he had learned from John Shorter in the telephone call. Judge Hastings was stunned and shocked by the news. Judge Hastings did not express outrage or anger.

Testimony of Hemphill Pride at 1201, 1207.
Testimony of Judge Hastings at 3192-94, 3391-2, 3537-38.

*479. On October 9, 1981, after conveying to Judge Hastings the information learned from John Shorter, Pride went back to his room to drop off his son. Judge Hastings accompanied Pride. From there, Judge Hastings and Pride went to Judge Hastings' room at the L'Enfant Plaza Hotel, taking the elevator together. They did not continue to discuss William Borders' arrest when on the elevator due to the presence of other people.

Testimony of Hemphill Pride at 1202.

*480. When Judge Hastings and Hemphill Pride reached Judge Hastings' hotel room, they continued to discuss the situation. Pride gave Judge Hastings the names of the two FBI agents and telephone number given to Pride by John Shorter. At Judge Hastings' request, Pride repeated the information he had learned from Shorter.

Testimony of Hemphill Pride at 1203-1204, 1275.
Testimony of Judge Hastings at 3391.

481. When in Judge Hastings' L'Enfant Plaza Hotel room, after telling Judge Hastings of William Borders' arrest, Hemphill Pride advised Judge Hastings to go back to Florida and get in contact

with his own lawyer. Pride advised that Judge Hastings not be interviewed by the FBI in Washington, D.C.

Testimony of Hemphill Pride at 1204.

482. On October 9, 1981, after learning of William Borders' arrest, Judge Hastings packed his clothes in Hemphill Pride's presence. The two men then went together to the lobby of the L'Enfant Plaza Hotel. Pride said he would drive Judge Hastings to the airport because Pride's car was in the hotel garage. Judge Hastings, however, insisted on taking a cab. Judge Hastings told Pride, "Listen, you're on probation. You go back with your wife. You don't need to be involved in this. I'll get to the airport." Judge Hastings prevailed.

Testimony of Hemphill Pride at 1205.
Testimony of Judge Hastings at 3194-95.

483. On October 9, 1981, Hemphill Pride intended to drive Judge Hastings to Washington National Airport.

Testimony of Hemphill Pride at 1255.

484. On October 9, 1981, after Judge Hastings insisted on taking a cab to the airport, Hemphill Pride left Judge Hastings in the lobby of the L'Enfant Plaza Hotel.

Testimony of Hemphill Pride at 1206.

*485. On October 9, 1981, before he left the L'Enfant Plaza Hotel, Judge Hastings did not give Hemphill Pride money to cover any charges that Judge Hastings incurred while at the hotel. Nor did Judge Hastings ask Pride to pick up the suit Judge Hastings had left with the hotel valet.

Testimony of Hemphill Pride at 1206.

486. On the afternoon of October 9, 1981, Judge Hastings was aware that the FBI in Washington, D.C. wanted to interview him.

Testimony of Hemphill Pride at 1203-1204, 1275.
Testimony of Judge Hastings at 3193.

*487. Judge Hastings left the L'Enfant Plaza Hotel at approximately 3:35 or 3:40 p.m. on October 9, 1981.

Testimony of William Murphy at 615.
Testimony of Hemphill Pride at 1999-2005, 2007, 1272, 1275.
Testimony of Dale Bird at 1338.
Stipulation 186.

488. Judge Hastings left the L'Enfant Plaza Hotel for Florida on October 9, 1981 without picking up his suit from the hotel valet service.

Stipulation 168.
House Exhibit 132.
Testimony of Judge Hastings at 3410.

*489. On October 9, 1981, Judge Hastings left the L'Enfant Plaza Hotel for Florida without paying for the cleaning of his suit by the hotel valet service or for the room service charges that he had incurred.

House Exhibit 130.
Testimony of Albert Blocker at 1514.
Testimony of Judge Hastings at 3410.

490. Judge Hastings did not think that Borders would "take care" of his incidental expenses at the hotel -- i.e., room service and other personal expenses.

Testimony of Judge Hastings at 3184.

491. On October 9, 1981, Judge Hastings left the L'Enfant Plaza Hotel for Florida without checking out.

Testimony of Dale Bird at 1330.
Testimony of Judge Hastings at 3409-10.

*492. On October 9, 1981, after learning of William Borders' arrest, Judge Hastings did not make any telephone calls from the L'Enfant Plaza Hotel.

Testimony of Hemphill Pride at 1208.

*493. On October 9, 1981, between 2:45 and 3:45 p.m., Judge Hastings could not have learned that his mother was hysterical as a result of the media banging at the doors and windows for there were no media people at her home at that time.

Testimony of Judge Hastings at 3406.

494. *At Judge Hastings' residence, where his mother also lived, there was a security system which required guests to sign in at a guard's office before entering the condominium complex.

Testimony of Judge Hastings at 3406.

495. There were no media persons signed in on the log at Judge Hastings' condominium complex October 9, 1981 until around 8:00 p.m.

Testimony of Judge Hastings at 3406.

*496. Judge Hastings did not leave the L'Enfant Plaza Hotel on the afternoon of October 9, 1981 because he had learned through a telephone call to his mother that she was hysterical as a result of the actions of the media outside her home in the condominium complex.

Testimony of Judge Hastings at 3392, 3401-02, 3406.
Testimony of Hemphill Pride at 1208.

*497. On October 9, 1981, from the time he conveyed to Judge Hastings the message from John Shorter, until the time they parted in the lobby of the L'Enfant Plaza Hotel, Hemphill Pride was never out of Judge Hastings' presence.

Testimony of Hemphill Pride at 1208.

498. On October 9, 1981, from the time he conveyed to Judge Hastings the message from John Shorter, until the time they parted in the lobby of the L'Enfant Plaza Hotel, Hemphill Pride did not observe Judge Hastings making any telephone calls.

Testimony of Hemphill Pride at 1208.

499. HOBIS (the acronym for Hotel Billing Information System) is a computerized system that provides information to a hotel about long-distance calls which are placed by hotel guests and charged to the guest's hotel room. The information includes the room number to which the telephone call is being charged, the date and length of the telephone call, the cost of the telephone call and

the telephone number called. After the hotel receives a print out of the information, the hotel posts that information to the guest's bill.

Testimony of Senora Avery at 1457, 1458-1459, 1472-1473, 1499-1500.

500. Under the HOBIS system, each telephone call is given a voucher number, in sequential order, which is assigned at the completion of the telephone call. The voucher number orders the calls based on when they were completed. The HOBIS printout for each call contains the voucher number.

Testimony of Senora Avery at 1459-1460, 1463, 1466-1468.

501. The HOBIS record for all calls charged to rooms at the L'Enfant Plaza Hotel on October 9, 1981 reflects only two long-distance telephone calls ending between 2:29 p.m. and 4:00 p.m. One telephone call was placed to area code 205, which is in Pennsylvania. The other telephone call was placed to area code 201, which is in New Jersey.

House Exhibit 140.
Testimony of Senora Avery at 1474.

*502. The HOBIS record for all calls charged to rooms at the L'Enfant Plaza Hotel on October 9, 1981 reflects all the telephone calls which were made from the hotel and charged to a guest's room between 2:29 p.m. and 4:00 p.m. There is no break in the sequential voucher numbers, which would indicate a missing record.

House Exhibit 140.
Testimony of Senora Avery at 1474-1475.

503. The HOBIS record of all calls charged to rooms at the L'Enfant Plaza Hotel for October 9, 1981 reflects only one call to the Miami or Ft. Lauderdale area. That call began at 10:00 p.m., lasted eight minutes, and was placed from a room other than the room occupied by Judge Hastings.

House Exhibit 140.
Testimony of Senora Avery at 1475.
Stipulation 175.

504. The HOBIS record of all calls charged to rooms at the L'Enfant Plaza Hotel on October 9, 1981, reflects no long distance

telephone calls charged to room 11239, which was Judge Hastings' room, and no long distance telephone calls charged to the adjoining rooms, 11229 and 11231, which were assigned to William Borders.

House Exhibit 140.
Testimony of Senora Avery at 1475-1476.
Testimony of Albert Blocker at 1514-1515.
Stipulation 175.
Testimony of Judge Hastings at 3397.

*505. When the HOBIS printer fails at the L'Enfant Plaza Hotel, a record is made. There is no record indicating a failure of the HOBIS printer at the L'Enfant Plaza Hotel on October 9, 1981.

Testimony of Albert Blocker at 1523.

*506. In October 1981, the L'Enfant Plaza Hotel was not having problems with the HOBIS system.

Testimony of Albert Blocker at 1538-1539.

507. The HOBIS record does not reflect calls made from a hotel that are charged to a third number or to a credit card.

Testimony of Senora Avery at 1499-1500.

508. The telephone records of Judge Hastings' residence and chambers, the telephone records of Judge Hastings' mother, and the telephone records of Patricia Williams' residence, do not reflect any calls from the L'Enfant Plaza Hotel in Washington, D.C. on October 9, 1981 being charged to those numbers.

House Exhibits 31, 136 and 137.
Testimony of Dale Bird at 1335.

509. Judge Hastings did not charge to his credit cards any telephone calls made from the L'Enfant Plaza Hotel on October 9, 1981.

House Exhibit 156 at 2215.
Testimony of Judge Hastings at 3392.

510. On October 9, 1981, Judge Hastings took a taxi, at a cost of fifty dollars, to Baltimore-Washington International Airport, from the L'Enfant Plaza Hotel in Washington, D.C.

Stipulation 184.
Testimony of Judge Hastings at 3195.

511. Baltimore-Washington International Airport is 31.9 miles from the L'Enfant Plaza Hotel and approximately a one hour drive in Friday afternoon traffic.

Testimony of Dale Bird at 1338.
Testimony of Judge Hastings at 3394.

512. Washington National Airport is approximately four miles or a ten minute cab ride from the L'Enfant Plaza Hotel.

Stipulation 182.
Testimony of Judge Hastings at 3413.

513. Before departing the L'Enfant Plaza Hotel on October 9, 1981, Judge Hastings did not check the availability of flights leaving Washington National Airport.

Stipulation 266.
Testimony of Judge Hastings at 3415.

514. On October 9, 1981, there was a 4:35 p.m. direct flight to Miami, Florida, leaving from Washington National Airport, with 14 seats available.

Stipulation 181.
Testimony of Judge Hastings at 3414.
House Exhibit 78.

515. On July 20, 1981, Judge Hastings had a reservation on Eastern Airlines flight 197 departing Washington National Airport at 5:30 p.m. for Miami, Florida.

Stipulation 267.

516. Judge Hastings was scheduled to depart Washington National Airport on October 11, 1981 and fly to Orlando, Florida.

Testimony of Dale Bird at 1331-1332.
House Exhibit 133.

517. On October 9, 1981, at 4:37 p.m., Judge Hastings called his mother from a pay telephone at Baltimore-Washington International Airport and spoke for four minutes. He placed another call to her at 4:43 p.m. and spoke for two minutes.

Stipulation 186.

518. On October 9, 1981, at 5:06 p.m., Judge Hastings called Patricia Williams at her home in Lauderhill, Florida from a pay telephone at Baltimore-Washington International Airport and spoke for one minute.

Stipulation 187.

519. During the 5:06 p.m. telephone call on October 9, 1981, from the Baltimore-Washington International Airport, Judge Hastings told Patricia Williams to call him back at a different pay telephone.

Stipulation 188.

520. When Patricia Williams called Judge Hastings back at 5:07 p.m., on October 9, 1981, at the Baltimore-Washington International Airport, Judge Hastings told her to go outside, find a pay telephone and call him back.

Stipulation 189.

521. On October 9, 1981, at 5:22 p.m., Patricia Williams called Judge Hastings at a pay telephone at the Baltimore-Washington International Airport from a pay telephone at a location other than her home in Lauderhill, Florida.

Stipulation 190.

522. After Patricia Williams called him at the Baltimore-Washington International Airport at 5:22 p.m. on October 9, 1981, Judge Hastings took her number, moved to another pay telephone at Baltimore-Washington International Airport and, at 5:24 p.m., called Ms. Williams at her pay telephone.

Stipulation 191.

523. The purpose of Judge Hastings' request to Patricia Williams that she call him back at a different pay phone and that she ultimately go out and call him from a pay phone was to assure that he could talk to her without being overheard.

Testimony of Judge Hastings at 3418-20.

524. In October 1981, Judge Hastings thought that Patricia Williams' phone, as well as his home and chambers phones, were being tapped.

Testimony of Judge Hastings at 3504.

525. On Friday, October 9, 1981, at 5:31 p.m. Judge Hastings made a reservation to go to Fort Lauderdale, Florida on Delta Airlines flight 237 departing at 6:30 p.m. That flight was scheduled to continue on to Miami from Fort Lauderdale.

Stipulation 192.
House Exhibit 134.

526. There is a handwritten notation on Judge Hastings' ticket for Delta flight 237 on October 9, 1981, crossing out Fort Lauderdale as his destination and substituting Miami as the final destination.

Stipulation 193.
House Exhibit 135.

527. On October 9, 1981, Judge Hastings' car was parked at the Miami International Airport.

Stipulation 183.
Testimony of Judge Hastings at 3413-14.

528. On October 9, 1981, Judge Hastings disembarked at Fort Lauderdale from Delta flight 237, which was scheduled to arrive at 8:38 p.m.

Stipulation 194.

529. On October 9, 1981, Judge Hastings rented a car when he arrived at the Fort Lauderdale airport.

Stipulation 195.
Testimony of Judge Hastings at 3414, 3421.

530. Prior to being interviewed by the FBI on October 9, 1981 in Lauderhill, Florida, Judge Hastings had not contacted anyone in the FBI that day.

Stipulation 196.
Testimony of Judge Hastings at 3420.

531. Some time between 8:30 and 9:30 p.m. on October 9, 1981, Special Agent John Simmons received a call at home from the Special Agent in Charge of the Miami Division, who advised Simmons that Judge Hastings had not been located in Washington, D.C. The Special Agent in Charge asked Simmons to locate another mature FBI agent and to attempt to find Judge Hastings in the Ft. Lauderdale area.

Testimony of John Simmons at 1371.

532. On October 9, 1981, Special Agent William Murphy, the case agent on the investigation who had been assigned to interview Judge Hastings, was in Washington, D.C. where Judge Hastings was scheduled to attend the National Bar Association dinner/boat ride honoring William Borders.

Testimony of John Simmons at 1454.
Testimony of William Murphy at 605.

*533. At approximately 10:00 to 10:30 p.m. on October 9, 1981, Special Agent John Simmons, with his partner Agent Larry Harrigan, began to try to locate Judge Hastings. They proceeded first to the residence of Judge Hastings and his mother.

Testimony of John Simmons at 1371.

534. On October 9, 1981, Mildred Hastings lived with her son, Alcee L. Hastings, at 2970 N.W. 55th Ave., Apt. 1-B, Lauderhill, Florida. Two telephone numbers were provided to that residence. Telephone number (305) 486-0733 belonged to Mildred Hastings, and telephone number (305) 731-8176 was used by Judge Hastings.

Stipulation 198.

*535. On October 9, 1981, Special Agent John Simmons and his partner arrived at the residence of Judge Hastings and his mother at approximately 11:00 p.m. They identified themselves to Mrs.

Hastings and asked if she had seen Judge Hastings. Mrs. Hastings responded that she had not seen her son.

Testimony of John Simmons at 1372.

*536. When at the residence of Judge Hastings and his mother on October 9, 1981, Special Agent John Simmons also asked Mrs. Hastings whether she had heard from her son. Mrs. Hastings responded no. The agents then asked Mrs. Hastings to have the judge contact the Miami office of the FBI if she heard from him. Mrs. Hastings agreed to do so.

Testimony of John Simmons at 1373.

537. On October 9, 1981, after not locating Judge Hastings at his residence, Special Agent John Simmons and his partner proceeded to the home of Patricia Williams, who they understood was Judge Hastings' fiancee.

Testimony of John Simmons at 1374.

538. At approximately midnight on October 9, 1981, Special Agent John Simmons and his partner arrived at the home of Patricia Williams in the Ft. Lauderdale area. They knocked and Patricia Williams opened the door. Standing behind her towards the back of the house was Judge Hastings. He invited the agents in and stated, "Gentlemen, I've been expecting you. Come on in."

Testimony of John Simmons at 1374.

539. At the home of Patricia Williams, Special Agent John Simmons and his partner interviewed Judge Hastings for approximately two and one-half hours. They first identified themselves and advised the judge of his rights.

Testimony of John Simmons at 1374, 1427.
Testimony of Judge Hastings at 3203-04, 3205.

*540. When Judge Hastings was interviewed by the FBI at Patricia Williams' home after midnight, on October 10, 1981, Judge Hastings was very relaxed. He answered every question immediately and spoke as if he had rehearsed his answers.

Testimony of John Simmons at 1376, 1425-1426.

541. During the interview conducted by the FBI at Patricia Williams' home after midnight, on October 10, 1981, Judge Hastings stated that he had left Washington, D.C. that day because he felt he would be better able to defend himself on his home turf with respect to the charges involving William Borders.

Testimony of John Simmons at 1376.
Respondent Exhibit 42.

542. During the interview conducted by the FBI at Patricia Williams' home after midnight, on October 10, 1981, Judge Hastings did not mention any telephone calls from the L'Enfant Plaza Hotel to his mother or to Patricia Williams.

Testimony of John Simmons at 1376-1377.
Respondent Exhibit 42.
Testimony of Judge Hastings at 3409.

543. The first time that Judge Hastings mentioned making the calls from the L'Enfant Plaza Hotel to his mother and to Patricia Williams was at his criminal trial.

Testimony of Judge Hastings at 3400.

544. During his interview with the FBI on October 10, 1981, Judge Hastings did not tell Agent Simmons that his relationship with William Borders and his many contacts with Borders were for the purpose of discussing Hemphill Pride.

Testimony of Judge Hastings at 3575.

545. On October 10, 1981, Judge Hastings refused to take a polygraph.

Testimony of John Simmons at 1386.
Testimony of Judge Hastings at 3205.

546. At 6:38 p.m. on Monday, October 12, 1981, three days after Borders' arrest, Judge Hastings placed a call from his home telephone number to William Borders' home telephone number. The call lasted 2 minutes.

Stipulation 201.
House Exhibit 31.
Testimony of Judge Hastings at 3206, 3487.

547. Judge Hastings' mother, Mildred Hastings, had her own separate telephone line, with a separate number and bill.

Stipulation 198.
Testimony of Judge Hastings at 3489.

548. Judge Hastings' mother, Mildred Hastings, did not know William Borders' mother, Alberta Borders.

Testimony of Judge Hastings at 3488.

549. Grand Jury 81-1 (MIA) returned an indictment against William Borders and Judge Hastings on December 29, 1981.

Stipulation 202.

550. Grand Jury 81-1 (MIA) indicted William Borders on four counts. The first count charged Borders with conspiring to solicit a sum of money from criminal defendants in return for Alcee L. Hastings being influenced in the performance of official acts as a federal judge, in violation of 18 U.S.C. sec. 371. The second count charged Borders with corruptly influencing, obstructing and impeding justice and endeavoring to do so in violation of 18 U.S.C. Section 1503. This count alleged that Judge Hastings had informed Borders of the substance and date of issuance of the forfeiture order he was preparing and that Borders had passed the information to a person, "Paul Rico," whom he believed to be a defendant in the Romano case. Counts three and four alleged that Borders, in violation of 18 U.S.C. sec. 1952, travelled in interstate commerce with the intent to promote, carry out, and facilitate the promotion and carrying out of an unlawful activity, namely a bribery in violation of 18 U.S.C. sec. 201.

Stipulation 203.

551. Grand Jury 81-1 (MIA) indicted Alcee L. Hastings on two counts. The first count charged Alcee L. Hastings with conspiring to solicit a sum of money from criminal defendants in return for Alcee L. Hastings being influenced in the performance of official acts as a federal judge, in violation of 18 U.S.C. sec. 371. The second count charged Alcee L. Hastings with corruptly influencing, obstructing and impeding justice and endeavoring to do so in violation of 18 U.S.C. sec. 1503. This count alleged that Alcee L. Hastings had informed Borders of the substance and date of

issuance of the forfeiture order he was preparing and that Borders had passed the information to a person, "Paul Rico," whom Borders believed to be a defendant in the Romano case.

Stipulation 204.

552. United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida) was assigned to Judge Edward T. Gignoux on January 4, 1981, sitting by designation.

Stipulation 205.

553. Some time after he testified before the grand jury, Hemphill Pride received a telephone call from William Borders, during which Borders asked Pride to meet with Borders' attorney, John Shorter. After obtaining the advice of counsel, Pride agreed to the interview and in January, 1982, Pride travelled to Washington, D.C. for this purpose. Because he was on parole at the time, Pride obtained permission from his probation officer to be in Washington from January 21 through January 24, 1982 in order to meet with John Shorter.

Testimony of Hemphill Pride at 1208-1211.
House Exhibit 127.

554. Some time between January 21 and January 24, 1981, Hemphill Pride met with John Shorter in Washington, D.C. During the meeting, Shorter asked Pride to listen to a tape recording of a conversation between Judge Hastings and William Borders and to read the transcript. Shorter did not explain where or when the conversation took place. Pride listened to the tape and read the transcript three times. When he listened a third time, Pride discovered that the tape referred to "Hemp," where the transcript read "him." Pride realized that the taped conversation had to do with writing "letters for Hemp."

Testimony of Hemphill Pride at 1212-1214.

555. At the meeting with John Shorter in Washington, D.C., Hemphill Pride was upset when he discovered the "letters for Hemp" on the tape recording. Pride told Shorter that he was not going to be part of any defense or plan that involved the writing of letters.

Testimony of Hemphill Pride at 1256-1257.

556. In 1981, Judge Hastings never offered to Hemphill Pride letters in support of Pride's reinstatement to the South Carolina bar. Judge Hastings did not obtain Pride's permission to write letters in support of reinstatement. Pride never discussed with Judge Hastings letters in support of reinstatement. Nor did Pride request or solicit from Judge Hastings such letters.

Testimony of Hemphill Pride at 1174-1176, 1257.
Testimony of Judge Hastings at 3644.

*557. In 1981, William Borders never offered to Hemphill Pride letters in support of Pride's reinstatement to the South Carolina bar. Pride never discussed with Borders letters in support of reinstatement. Nor did Pride request or solicit from Borders such letters.

Testimony of Hemphill Pride at 1175-1176.

*558. In 1981, Hemphill Pride did not want letters of support from persons outside of South Carolina because such letters would not have been beneficial. Pride felt that he was in control of his problem and was happy with the progress he had made, which he conveyed to Judge Hastings and William Borders. Pride believed that his indefinite suspension from the South Carolina bar was a local problem and that letters from persons outside of the state would have hurt rather than helped him.

Testimony of Hemphill Pride at 1176, 1257.

*559. In the late summer or fall of 1981, Hemphill Pride did not write any information down for William Borders or Judge Hastings.

Testimony of Hemphill Pride at 1229.

*560. In the late summer or fall of 1981, William Borders was not supposed to get any information from Hemphill Pride which could be used for letters in support of Pride's reinstatement to the South Carolina bar.

Testimony of Hemphill Pride at 1229-30.

*561. In the late summer or fall of 1981, Hemphill Pride did not ask Judge Hastings or William Borders for financial assistance.

Testimony of Hemphill Pride at 1231.

562. After Hemphill Pride was released from prison, neither Judge Hastings nor William Borders asked Jesse McCrary to write letters or contribute money in support of Hemphill Pride's reinstatement to the South Carolina Bar. Jesse McCrary has known Hemphill Pride since 1962 when McCrary, Pride and Judge Hastings attended law school together.

Testimony of Jesse McCrary at 2540, 2563, 2604.

563. At no time did Judge Hastings ask Judge Henry Latimer to write letters in support of Hemphill Pride or to contribute money to Pride's family. Judge Latimer attended law school with Judge Hastings and Hemphill Pride. He has remained in close contact with Judge Hastings.

Testimony of Judge Henry Latimer at 2631-32, 2655-56.

564. In 1981, Judge Hastings did not ask Judge Edward Rogers to contribute funds for Hemphill Pride. Judge Rogers attended law school with Judge Hastings and Hemphill Pride. He has remained in contact with Judge Hastings.

Testimony of Judge Edward Rogers at 2663, 2669-70.

565. At no time has Judge Hastings asked Judge Matthew Perry to help Hemphill Pride in any way. Judge Perry is a U.S. District Judge in Columbia, South Carolina and has known Hemphill Pride for most of Pride's life. Judge Perry has known Judge Hastings since Judge Hastings practiced law in Florida.

Testimony of Judge Matthew Perry at 2698, 2704-05.

566. At no time has William Borders approached Judge Matthew Perry with respect to helping Hemphill Pride. Judge Perry knows William Borders through the National Bar Association.

Testimony of Judge Matthew Perry at 2699, 2705.

567. In 1981, neither Judge Hastings nor William Borders asked Andrew Chisholm to contribute to or assist Hemphill Pride in any way. Chisholm has known Pride since 1976 when Chisholm was involved in President Jimmy Carter's election campaign.

Testimony of Andrew Chisholm at 2993, 2999.

*568. After his meeting with John Shorter in Washington, D.C. in January 1982, Hemphill Pride received a telephone call from Bill Larkins, a mutual friend of his and Judge Hastings. Larkins asked Pride if he would come to Atlanta to meet Judge Hastings. Pride agreed to do so.

Testimony of Hemphill Pride at 1215.
Testimony of Judge Hastings at 3264.

*569. After receiving the telephone call from Bill Larkins, Hemphill Pride received a call from Judge Hastings, during which Judge Hastings stated that he would come to Columbia, South Carolina rather than have Pride travel to Atlanta.

Testimony of Hemphill Pride at 1215.

570. In January, 1982, on the day of the Super Bowl, Judge Hastings arrived in Columbia, South Carolina, and called Hemphill Pride. At that time, Pride invited Judge Hastings to have dinner with him and his mother. Judge Hastings declined the invitation. The judge then asked Pride to meet him at a law firm at 9:00 the next morning, in the presence of an attorney named Jack Swerling.

Testimony of Hemphill Pride at 1216, 1218.
Testimony of Judge Hastings at 3264-65.

571. On the Monday following the Super Bowl in January, 1982, Hemphill Pride met with Judge Hastings in Columbia, South Carolina. During the meeting, Jack Swerling was present. At that meeting, Judge Hastings asked whether or not the FBI had intimidated Pride. In response, Pride stated no, he had not been intimidated. Judge Hastings also asked about Pride's interview with counsel for the Government prior to Pride's appearance before the grand jury. At the meeting, there was no discussion of any letters of support by Judge Hastings or William Borders.

Testimony of Hemphill Pride at 1218-19, 1222.
Testimony of Judge Hastings at 3265.

572. At the conclusion of their meeting in Columbia, South Carolina, in January, 1982, Hemphill Pride offered to drive Judge Hastings to the airport. Judge Hastings declined the offer. Pride insisted and prevailed.

Testimony of Hemphill Pride at 1220.
Testimony of Judge Hastings at 3265-66.

*573. In January, 1982, Hemphill Pride drove Judge Hastings to the airport in Columbia, South Carolina. No other person was present. During the drive, Pride asked Judge Hastings about the letters that had been referred to in the taped conversation that Pride had heard at the meeting with John Shorter in Washington, D.C. Judge Hastings told Pride that he and William Borders were trying to help Pride by soliciting money and letters in support of Pride's readmission to the South Carolina Bar.

Testimony of Hemphill Pride at 1220-22.

*574. During their drive to the Columbia, South Carolina airport, in January, 1982, Judge Hastings told Hemphill Pride that it was important that Pride remember the letters. Pride, however, had nothing to recall, because there never had been any request for or discussion of letters of support.

Testimony of Hemphill Pride at 1285, 1287-88.

*575. During their drive to the Columbia, South Carolina airport, in January, 1982, Hemphill Pride told Judge Hastings that if the judge was writing letters of support of Pride's reinstatement, it was an officious act for Pride did not want the letters and such letters would hurt rather than help him. Judge Hastings responded that Pride did not have to know about the letters and tried to convince Pride that he and Borders were writing letters of support.

Testimony of Hemphill Pride at 1220-22, 1259-60, 1285.

*576. During their drive to the Columbia, South Carolina airport, in January, 1982, Hemphill Pride stated that he did need to know about the letters because the matter of reinstatement was so important. Judge Hastings tried to convince Pride that his and William Borders' efforts were legitimate.

Testimony of Hemphill Pride at 1258-59.

*577. During their drive to the Columbia, South Carolina airport, in January, 1982, Hemphill Pride told Judge Hastings that the letter writing defense wasn't "going to fly" and that Pride would not support any statement that Judge Hastings and William Borders were writing letters to help him.

Testimony of Hemphill Pride at 1262-63, 1284.

578. Judge Hastings does not deny that at some point prior to his criminal trial he had a conversation with Hemphill Pride concerning the letters of support which Judge Hastings alleges he and William Borders were undertaking on behalf of Pride.

Testimony of Judge Hastings at 3284.

579. Some time after their drive to the Columbia, South Carolina airport in January, 1982, Judge Hastings called Hemphill Pride and left a message with Pride's mother that he would call Pride back. Pride told his counsel about Judge Hastings' call. Pride's counsel relayed the information to the FBI. Pride did not know why Judge Hastings was calling.

Testimony of Hemphill Pride at 1248.

580. Some time after the meeting with Judge Hastings in Columbia, South Carolina, in January, 1982, Hemphill Pride was interviewed by the FBI. At that time, Pride agreed to allow the Government to record the telephone conversation he expected to receive from Judge Hastings based on the message Judge Hastings had left with Pride's mother.

Testimony of Hemphill Pride at 1223, 1248.

*581. Hemphill Pride agreed to record the telephone conversation between himself and Judge Hastings on the advice of counsel. Pride wanted to protect himself from any implication that he was connected to the allegations of bribery involving Judge Hastings and William Borders.

Testimony of Hemphill Pride at 1223-24.

582. On January 19, 1982, Judge Gignoux issued an order in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), requiring the defendant to produce for the Government, inter alia, those documents he intended to introduce as evidence in chief at the trial and requiring the Government to produce, inter alia, all written or recorded statements made by the defendant.

Stipulation 206.
House Exhibit 149.

583. Pursuant to the January 19, 1982 discovery order in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), the prosecution produced various documents on January 19, 1982,

including the tapes of the intercepted telephone calls between Judge Hastings and William Borders. The tape recordings included the October 5, 1981 conversation.

Stipulation 207.
Testimony of Robert Richter at 1574.
Testimony of Judge Hastings at 3470-71.
House Exhibits 150, 151.

584. At least as early as January, 1981, Judge Hastings was aware that the "letters for Hemp" would be a critical part of his defense.

Testimony of Judge Hastings at 3471, 3472.

585. Pursuant to the January 19, 1982 discovery order in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), the defense, in mid-February, 1982, filed "Defendant's Reciprocal Inventory No. 1."

Stipulation 208.
House Exhibit 152.

586. No letters or any drafts of letters about or to "Hemp" or Hemphill Pride written by Judge Hastings were included in Judge Hastings' production in mid-February, 1982, pursuant to the January 19, 1982 reciprocal discovery order in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida).

Stipulation 209.
House Exhibit 152.
Testimony of Judge Hastings at 3471-72.

587. During his representation of Judge Hastings, Joel Hirschhorn, counsel for Judge Hastings from January 12, 1982 to March 3, 1982, never saw any letters or any drafts of letters about or to "Hemp" or Hemphill Pride written by Judge Hastings.

Stipulation 210.
Testimony of Judge Hastings at 3475.

588. At the time Judge Hastings' criminal case was assigned to Judge Gignoux, Judge Hastings' lead counsel were Joel Hirschhorn and Andrew Mavrides, both of whom were experienced trial lawyers.

Testimony of Judge Hastings at 3254, 3258, 3259-60.

589. Joel Hirschhorn withdrew as counsel for Judge Hastings on March 2, 1982.

Stipulation 211.

590. On February 1, 1982, Judge Hastings filed a motion in United States v. Alcee L. Hastings, No. 81-596-Cr. ETG (S.D. Florida), to quash his indictment and dismiss the criminal proceedings against him for lack of jurisdiction, in which he argued that a sitting federal judge had to be impeached before a criminal prosecution could proceed.

Stipulation 212.

591. On March 2, 1982, Judge Hastings' trial in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), was stayed pending the interlocutory appeal of the motion he had filed challenging his prosecution prior to impeachment.

Stipulation 213.

592. On March 2, 1982, in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), Judge Edward T. Gignoux granted William Borders' motion for change of venue of his trial, and ordered his case to be tried in Atlanta, Georgia.

Stipulation 214.

593. William Borders was tried before a jury in Atlanta, Georgia from March 22, 1982 until March 29, 1982.

Stipulation 215.

594. The jury in United States v. Borders, (No. CR-82-75-A), convicted Borders on all counts on March 29, 1982.

Stipulation 217.

595. Andrew Mavrides, an attorney then representing Judge Hastings, attended William Borders' trial in March 1982, as an observer, and ordered and received copies of the trial transcript.

Stipulation 218.

596. Andrew Mavrides attended the Borders trial on behalf of Judge Hastings for the express purpose of keeping the judge informed as quickly as possible of all developments in the Borders trial.

Testimony of Judge Hastings at 3286.

597. On July 12, 1982, the United States Court of Appeals for the Eleventh Circuit upheld the trial court's denial of Judge Hastings' motion to quash his indictment and dismiss in United States v. Hastings.

Stipulation 219.

598. Beginning on October 19, 1982, the case of United States v. Hastings again became active.

House Exhibit 148.
Testimony of Robert Richter at 1592.

599. In December 1982, Judge Hastings produced for the prosecution handwritten letters regarding Hemphill Pride, which according to Judge Hastings' testimony at his criminal trial and before the Impeachment Trial Committee, were written on October 5, 1981.

Stipulation 220.
House Exhibit 153.
Testimony of Judge Hastings at 3294, 3476-77.

600. The draft "letters for Hemp" produced by Judge Hastings in December 1982 consisted of four yellow legal pad sheets, in Judge Hastings' handwriting, comprising three letters, one addressed to Hemphill Pride, and the other two addressed to unspecified friends and supporters.

House Exhibit 154.

601. The draft "letters for Hemp" produced by Judge Hastings in December, 1982, are pristine. They have no cross-outs, strike-outs or corrections.

House Exhibit 154.

602. When Judge Hastings finished his call with William Borders concerning the "letters for Hemp," he did not give the draft letters to his secretary to type, even though it was his practice

to give such drafts to his secretary the same day they were drafted.

Testimony of Judge Hastings at 2249, 3464-65.
Testimony of Betty Williams at 2712, 2753-54.
House Exhibit 156 at 2248.

603. The draft "letters for Hemp" produced by Judge Hastings in December 1982 were never sent out or shown to Judge Hastings' secretary, Betty Williams.

Testimony of Judge Hastings at 3465.

604. In December, 1982, the prosecution in United States v. Hastings submitted the draft "letters for Hemp" to forensic experts in an attempt to date the creation of the letters. One test focused on dating the ink. The forensic tests indicated that based on the type of ink employed it was not possible to conclude whether the letters were written on October 5, 1981, or at a subsequent time. In December 1982, when the analysis was conducted, there were no other tests available to date the ink.

Testimony of Antonio Cantu at 1651-52.
House Exhibits 145.

605. The other forensic tests done in December, 1982, on the draft "letters for Hemp" focused on indentations and water marks on the paper, which might date the letters. The forensic expert used two different methods of examination. Due to the type of paper employed, the expert found no watermarks or indentations of value and, therefore, could not determine when the letters were prepared. In December 1982, there were no other tests available that could determine when the letters were written based on the paper employed and the indentations.

Testimony of David Attenberger at 1645.
Testimony of Antonio Cantu at 1652.
House Exhibits 147.

606. Antonio Cantu is currently a chemist with the United States Secret Service. He is an expert in the field of ink analysis.

Testimony of Antonio Cantu at 1649.
House Exhibit 144.

607. David Attenberger is currently a supervisory Special Agent of the FBI assigned to the FBI laboratory in Washington, D.C. as

a document examiner. He has examined hundreds of thousands of paper documents and is an expert in document analysis. In 1981, he was employed as an ink and paper analyst in the FBI laboratory.

Testimony of David Attenberger at 1641-43.

608. The trial in United States v. Hastings, No.81-596-CR-ETG (S.D. Florida), was held in Miami, Florida, beginning January 19, 1983, and continuing until February 4, 1983.

Stipulation 225.
House Exhibit 148.

609. In United States v. Hastings, No. 81-596-CR-ETG (S.D. Florida), no evidence was submitted about events relating to the Trafficante bribery scheme. The indictment charged that the conspiracy between Judge Hastings and William Borders began on September 10, 1981.

Testimony of Robert Richter at 1579.
Testimony of William Murphy at 547.

610. In United States v. Hastings, No. 81-596-CR-ETG (S.D. Florida), Judge Hastings' trial defense was conducted by Judge Hastings and Patricia Williams.

Stipulation 226.

611. In United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), William Borders was not called to testify.

Stipulation 227.

612. William Borders refused to sign an affidavit stating that Judge Hastings had nothing to do with the bribery scheme.

Testimony of Judge Hastings at 3541.

613. In United States v. Hastings, No.81-596-CR-ETG (S.D. Florida), Judge Hastings took the stand, appearing as the final witness in his defense.

Stipulation 228.

614. Judge Hastings testified at his criminal trial that he and William Borders did not agree to solicit a bribe from Thomas and Frank Romano.

House Exhibit 156 at 2058.

615. Specifically, Judge Hastings testified under oath at his criminal trial as follows:

Question:	Did you agree with and conspire with William Borders to influence, in any way, the performance of your judicial duties?
Answer:	No. I did not.
Question:	Did you agree with Bill Borders and intend knowingly and voluntarily to participate in any kind of illegal undertaking?
Answer:	None whatsoever. I did not do that, nor would I have done so, nor would I now.

House Exhibit 156 at 2058.

616. Judge Hastings testified at his criminal trial that he and William Borders did not agree that Judge Hastings would modify Thomas and Frank Romanos' three year jail sentences to probation in exchange for the bribe.

House Exhibit 156 at 2107-08.

617. Judge Hastings testified at his criminal trial that he and William Borders had never agreed that Judge Hastings would set aside the May 4, 1981 forfeiture order as part of a bribery scheme.

House Exhibit 156 at 2107-08.

618. Specifically, Judge Hastings testified under oath at his criminal trial as follows:

Question:	Let me say it this way: Is not the gist of what Mr. Borders said to the man he thought was Romano was that he could eliminate their jail sentences for $125,000. As a show of proof, A, he'd produce you at any restaurant they wanted, and B, a

	substantial portion of property would be returned to them?
Answer:	I believe that is the gist of the conversation.
Question:	Of course, you had no idea that was going on?
Answer:	No, I didn't.

House Exhibit 156 at 2107-08.

619. At his criminal trial, Judge Hastings testified that he expected to meet William Borders at the Fontainebleau Hotel on September 16, 1981.

House Exhibit 156 at 2009, 2057.

620. Specifically, Judge Hastings testified under oath at his criminal trial as follows:

Question:	Judge, would you tell the jury why you went to the Fontainebleau Hotel on September 16th?
Answer:	As I indicated, William Borders had indicated to me that he would be at the Fontainebleau Hotel during the dinner hour and for purely social purposes he and I were going to meet expressly for the purpose of socializing . . . I know for a fact that . . . William Borders indicated to me that he would be in Miami at the Fontainebleau Hotel September 16th. And that is the primary reason I went there.

* * * *

Question:	Judge did you dine at the Fontainebleau Hotel on September 16, 1981, to show your participation in a bribery scheme?
Answer:	Absolutely not.

House Exhibit 156 at 2009, 2057.

621. At his criminal trial, Judge Hastings testified that he was surprised by William Borders' appearance at his Sheraton-Washington Hotel room at 10:00 p.m. on September 12, 1981.

House Exhibit 156 at 1841, 2111.

622. Specifically, Judge Hastings testified under oath at his criminal trial as follows:

> Answer: He [Mr. Borders] knocked on the door. I answered it . . . and I said words to the effect, "Some kind of surprise," without trying to remember exactly what I said, but I was surprised to see Bill. . .
>
> * * * *
>
> Question: And you weren't waiting for Mr. Borders?
>
> Answer: Oh, absolutely not.

House Exhibit 156 at 1841, 2111.

623. At his criminal trial, Judge Hastings testified as to why, on October 5, 1981, he told his law clerk, Jeffrey Miller, to prepare the order returning a substantial amount of Thomas and Frank Romano' property.

House Exhibit 156 at 1969, 2139.

624. Specifically, Judge Hastings testified under oath at his criminal trial as follows:

> Answer: . . . But the most pressing consideration was the complexity of the forfeiture aspect and his leaving the possibility of his not being there when I returned from the long trip with the exception of one day that I was going to come back to try a juvenile that was in jail.
>
> And it is for that reason that I made the statement to him that I wanted the order done.
>
> * * *
>
> Question: What was the urgency to issuing the order on October the 6th?
>
> Answer: Because Jeffrey was going to be leaving and I was going to be away for the month of October.

House Exhibit 156 at 1969, 2139.

625. At his criminal trial, Judge Hastings testified as to the meaning and purpose of his October 5, 1981 telephone conversation with William Borders.

House Exhibit 156 at 1846, 1848, 2180, 2182, 2185, 1849-50, 1854, 2187-88.

626. Specifically, Judge Hastings testified under oath at his criminal trial as follows:

Question: At about 5:00 in the afternoon, you called Bill Borders on October 5th?

Answer: Yes, I — —

Question: Why did you call him?

Answer: I called him, then, because on October 4th, at some time in the afternoon, evidently he left a message for me with my mother . . . something about Hemphill.

And again it had to do with matters that he and I had been in rather ongoing discussions about . . . trying to raise money for him.

* * * *

Question: Now when you used the word "letters," were you in fact referring to letters?

Answer: I certainly was.

* * * *

Question: Mr. Borders goes, "Ah-hah" and then what do you say?

Answer: I say "And everything's okay. The only thing I was concerned about was, did you hear if, ah, hear from him after we talked?"

Question: And what are you talking about there?

Answer: I am referring specifically to the call that I received from Mr. Borders either on September 20th or 21st wherein he indicated to me he expected to see Hemphill again, and he was asking him specifically about his exact financial condition.

* * * *

Question: And Mr. Borders, "See I talked to him and he wrote some things down for me." What did you take Mr. Borders to mean there?

Answer: The best I can think I took that he meant had to do with Hemphill's financial condition.

* * * *

Question: Just so I am perfectly clear on your answer, you thought he was going to get some more information about Mr. Pride?

Answer: That is all I could have possibly had in my mind at that time, sir.

* * * *

Question: Now, are these the letters to which you refer in your October 5th conversation?

Answer: Certainly.

* * * *

Question: Judge Hastings, you said you wrote these letters on the Bench. On what date did you write these letters?

Answer: October 5th.

* * * *

Question: All right. So we are 100 percent clear on this, you wrote these letters, Government or Defense Exhibit 29, from the Bench during the Santorelli trial on October 5?

Answer: 100 percent clear.

House Exhibit 156 at 1846, 1848, 2180, 2182, 2185, 1849-50, 1854, 2187-88.

627. At his criminal trial, Judge Hastings offered into evidence House Exhibit 154, which are the handwritten drafts of the "letters for Hemp" that Judge Hastings produced in December, 1982.

Testimony of Robert Richter at 1575-76.

628. At his criminal trial, Judge Hastings testified that William Borders telephoned and spoke to Hemphill Pride at telephone number (803) 777-7716 on July 24, 1981.

House Exhibit 156 at 2033.

629. Specifically, Judge Hastings testified under oath at his criminal trial as follows:

Question: Judge, I would like to direct your attention to Item No. 11. Is there a phone call dated 7/24?

Answer: The second column. Item No. 11, dated July the 24th, is a telephone call to a number in Columbia, South Carolina, being Area Code 803-777-7716, and that call was for five minutes.

Question: Do you recognize that number?

Answer: The number is a number where Hemphill Pride may have been working. I am not certain if he was working there or not, but I have called that number myself.

Question: All right. And that call was made by Bill Borders, to Hemphill Pride on July 24th?

Answer: On July 24th, correct.

House Exhibit 156 at 2033.

630. On July 24, 1981, telephone number (803) 777-7716 was the business telephone number of Andrew Chisholm, who was the Assistant to the President for Minority Affairs at the University of South Carolina.

Prior Testimony of Andrew Chisholm (before the Eleventh Circuit Investigating Committee) at 7-8.

631. In 1981, Andrew Chisholm knew William Borders and received many telephone calls from him.

Testimony of Andrew Chisholm at 2984-85, 2987.

632. In 1981, Hemphill Pride had no access to Andrew Chisholm's office telephone number at the University of South Carolina.

Prior Testimony of Andrew Chisholm (before the Eleventh Circuit Investigating Committee) at 15.

633. Andrew Chisholm is unaware of any circumstances under which Hemphill Pride would have received a telephone call at Chisholm's office at the University of South Carolina in 1981.

Prior Testimony of Andrew Chisholm (before the Eleventh Circuit Investigating Committee) at 15.

634. At his criminal trial, Judge Hastings testified that he telephoned and spoke to Hemphill Pride at telephone number (803) 758-8825 on May 5, 1981 and September 2, 1981.

House Exhibit 156 at 2048-49.

635. Specifically, Judge Hastings unequivocally testified under oath at his criminal trial as follows:

Question:	Judge, would you tell us about the first call that I indicated with a little check on the front page, there?
Answer:	The first call would be Item 2 under the second full itemization column, and it is a call . . . . to Columbia, South Carolina. And the call is a five-minute call, and it is placed on September 2nd, at 11 something in the morning.
Question:	And to whom was that call placed?
Answer:	I know for a fact that this particular call was placed to Hemphill Pride.
Question:	Did you speak with Hemphill Pride?
Answer:	I certainly did.
Question:	On that day?
Answer:	I certainly did.

Question: All right. Now, would you seek out the second call that I have indicated on those toll records with a little check?

Answer: May 5th.

Question: May 5th?

Answer: '81. I spoke with Mr. Pride.

House Exhibit 156 at 2048-49.

636. Telephone number (803) 758-8825 on May 5, 1981 and September 2, 1981 was the business phone number of Carolyn McIver, a social acquaintance of Judge Hastings.

Prior Testimony of Carolyn McIver (before the Eleventh Circuit Investigating Committee) at 38-39.

637. In 1981, Carolyn McIver did not know Hemphill Pride.

Prior Testimony of Carolyn McIver (before the Eleventh Circuit Investigating Committee) at 56, 57.

638. In 1981, Hemphill Pride did not have access to the business phone of Carolyn McIver.

Testimony of Hemphill Pride at 1250-51.
Prior Testimony of Carolyn McIver (before the Eleventh Circuit Investigating Committee) at 56.

639. At his criminal trial, Judge Hastings unequivocally testified that he telephoned and spoke to Hemphill Pride at telephone number (803) 782-9387 on August 2, 1981.

House Exhibit 156 at 2051-52.

640. Specifically, Judge Hastings testified under oath at his criminal trial as follows:

Question: Judge, I direct your attention to the August 2nd call.

Answer: Yes.

Question: The one for eighteen minutes' duration?

Answer: Yes.

Question: Would you tell us what time that call was placed?

Answer: 9:20 in the morning, to Columbia, South Carolina, to a place that I know is the number of Hemphill Pride, and it was a eighteen-minute call.

Question: And did you, in fact, speak with Hemphill Pride for eighteen minutes on August 2nd?

Answer: Yes I did;. . .

House Exhibit 156 at 2051-52.

641. In 1981, Hemphill Pride had never been in Eleanor Golar-Williams' home.

Prior Testimony of Eleanor Golar-Williams (before the Eleventh Circuit Investigating Committee) at 9.
Testimony of Hemphill Pride at 1251.

642. Eleanor Golar-Williams is the former mother-in-law of Patricia Williams, who served as Judge Hastings' defense counsel at his criminal trial and before the Senate Impeachment Trial Committee.

Testimony of Eleanor Golar-Williams at 2612.
Testimony of Judge Hastings at 3484.

643. In 1981, and in earlier years, Patricia Williams and her daughter stayed in regular telephone contact with Eleanor Golar-Williams.

Testimony of Eleanor Golar-Williams at 2613.

644. Approximately in 1976, (804) 782-9387 became Eleanor Golar-Williams' home telephone number.

Testimony of Eleanor Golar-Williams at 2167.

645. Between 1976 and 1983, (804) 782-9387 was the telephone number that Patricia Williams would dial to reach Eleanor Golar-Williams at home.

Testimony of Eleanor Golar-Williams at 2617-2618.

*646. Patricia Williams telephoned Eleanor Golar-Williams at her home on fourteen occasions between April 14, 1979 and December 31, 1982.

House Exhibits 137 and 221.

647. On August 2, 1981, the telephone number (803) 782-9387 belonged to Eleanor Golar-Williams.

Prior Testimony of Eleanor Golar-Williams
(before the Eleventh Circuit Investigating
Committee) at 5.

648. Hemphill Pride has never received a telephone call at the home of Eleanor Golar-Williams.

Testimony of Hemphill Pride at 1251.
Prior Testimony of Eleanor Golar-Williams
(before the Eleventh Circuit Investigating
Committee) at 9.

649. At his criminal trial, Judge Hastings referred to House Exhibits 27a, 210 and 211 during the course of his testimony concerning the calls that he and William Borders made to Hemphill Pride in 1981.

Testimony of Robert Richter at 1578.

650. Patricia Williams handed House Exhibits 27a, 210 and 211 to Judge Hastings when he identified at his criminal trial the calls allegedly made to Hemphill Pride. Prior to Judge Hastings' testimony concerning those exhibits, Patricia Williams made check marks on the bills designating the relevant calls.

Testimony of Judge Hastings at 3486.
House Exhibit 156 at 2047-52.
House Exhibits 27a, 210, 211.

651. At his criminal trial, Judge Hastings testified that on the afternoon of October 9, 1981, he called his mother and Patricia Williams in Florida from the L'Enfant Plaza Hotel in Washington, D.C.

House Exhibit 156 at 1914-16, 2216.

652. Specifically, Judge Hastings testified under oath at his criminal trial as follows:

Question: . . . What did you do when you got down to your room?

Answer: The very first thing I did, walked straight into the room and picked up the telephone and called my mother.

Question: And when you called your mother, what did you learn?

Answer: When I called my mother, she was -- I do not wish to exaggerate -- I have never known her to be as hysterical as she was. It is just that simple. And I couldn't calm her down. . . .

Question: Did you make any other calls?

Answer: Yes, I did.

Question: Had Hemphill arrived at your room by this time?

Answer: No he had not.

Question: Who did you call?

Answer: I called you [Patricia Williams].

Question: All right. And what happened there?

Answer: I called you at your office at the Economic Opportunities Commission here at the Dupont Plaza Hotel and I learned you had been interviewed by the FBI and the particulars, at least in part, as to what had transpired in your interview with the FBI.

And in addition to that I learned that you had called my office and had learned that the FBI was there for the express purpose, among other things, of interviewing my staff.

* * * *

Question: You are certain that sitting in the hotel room after Mr. Pride gave you the news, that you made two long distance calls to Florida and you charged them to your room?

Answer: Right . . .

House Exhibit 156 at 1914-16, 2216.

653. Patricia Williams wrote and sent a letter dated October 14, 1981, to Judge Hastings that stated that she "felt pride and joy as well as horror as a result of our telephone conversation on Friday, October 9th, when you called me from Baltimore and indicated that you required my legal assistance in confronting allegations of bribery which you had just learned were being directed towards you." The letter refers only to the call made from Baltimore and makes no reference to any calls from the L'Enfant Plaza Hotel.

Testimony of Judge Hastings at 3400.
House Exhibit 230.

654. At his criminal trial, Judge Hastings testified as to why, on October 9, 1981, he took a plane from Baltimore-Washington International Airport rather than Washington National Airport.

House Exhibit 156 at 1922-24, 2224.

655. Specifically, Judge Hastings testified under oath at his criminal trial as follows:

Question: Why did you not go to the airport, the nearer airport?

Answer: There was never any question in my mind but that at that time in the evening I thought that all flights that left Washington, D.C. at that particular point in time, either went through Atlanta en route to Miami, but I was absolutely certain that there were none until 10:00 p.m.

* * * *

Question: Did you consider that there might be FBI agents looking for you at the National Airport?

Answer: It was of no concern to me had there been FBI agents at the National Airport, Dallas [Dulles] or at the

Baltimore Airport . . . I had no desire or design to not cooperate with any authorities.

* * * *

Question:	And your thinking was there would be no flights from National Airport that would fly you non-stop from Washington National Airport--
Answer:	That was my thinking.
Question:	--to Miami? Even though two months ago you had taken one?
Answer:	Yes, sir. That was my thinking at that particular time. I have traveled that way an awful lot, an awful lot.

House Exhibit 156 at 1922-24, 2224.

*656. There are very few documented phone contacts between William Borders and Judge Hastings in 1981 which were not made at or near the time of significant events in the Romano or Trafficante cases, or the respective bribery schemes which were developed concerning those cases.

House Exhibits 27, 31, 136, 195, and 196.

657. At the time William Dredge testified before the Senate Impeachment Trial Committee, no local, state or federal Government agency, nor the House of Representatives, held anything over William Dredge. He has never been paid by any Government agency in connection with this matter, except for reimbursement for expenses incurred when appearing as a witness.

Testimony of William Dredge at 188, 314-16.

658. At the time of the Senate Impeachment Trial Committee's hearings, Philip "Brother" Moscato was an unavailable witness due to very poor health.

House Exhibit 219.

659. Donna Mendez Myrill is currently an attorney practicing law at the Queen's District Attorney's Office in New York City.

Testimony of Donna Mendez Myrill at 819-20.

660. Dale Bird is currently a Special Agent of the FBI and has held that position for 14 years. In 1981, he was assigned to the Washington, D.C. field office.

Testimony of Dale Bird at 1327.

661. Wendy Loucks is currently a Special Agent of the FBI and has held that position for nine and one-half years. She is also an attorney. In 1981, Special Agent Loucks was assigned to the Miami field office.

Testimony of Wendy Loucks at 1350.

662. Wayne McDonald is currently a Special Agent of the FBI and has held that position for 18 years. In 1985, Special Agent McDonald was assigned to the Miami field office.

Testimony of Wayne McDonald at 848.

663. Senora Avery is currently Assistant Staff Manager for AT&T in Upton, Virginia. In 1981, Avery was a supervisor in the HOBIS office in the Richmond, Virginia area.

Testimony of Senora Avery at 1456-57.

664. Albert Blocker is currently the Comptroller of the L'Enfant Plaza Hotel in Washington, D.C. He held that position in 1981.

Testimony of Albert Blocker at 1512-13.

665. Robert Richter is currently an Associate Judge of the Superior Court of the District of Columbia. From 1978 to 1984, he was the Assistant Chief for operations of the Public Integrity Section at the Criminal Division of the U.S. Department of Justice. Judge Richter was one of the counsel who prosecuted Judge Hastings and William Borders.

Testimony of Robert Richter at 1572-73.

*666. Hemphill Pride was reinstated to the South Carolina bar in 1983 and is currently a practicing attorney. Neither the FBI, Department of Justice, nor any other federal agency played a role in securing Pride's reinstatement. Pride never asked for nor received any help from the Government.

Testimony of Hemphill Pride at 1161-62, 1280.

667. No agreement exists between Hemphill Pride and the Government relating to Pride's testimony or appearance before the Impeachment Trial Committee.

Testimony of Hemphill Pride at 1253.

[illegible]8. The Judicial Canon of Ethics prohibits a federal judge from engaging in any fund raising.

Testimony of Judge Matthew Perry at 2703.

*669. The Judicial Council is an autonomous section of the National Bar Association, responsible for putting on its own programs and social functions. It also has its own officers. The President of the National Bar Association does not have regular interaction with the judges who are active in the Judicial Council section of the National Bar Association.

Testimony of Judge Henry Latimer at 2659-60.

ARTICLES OF IMPEACHMENT XVI & XVII

The facts pertaining to the wiretap disclosure are organized by witness, in the order in which they appeared before the Senate Impeachment Trial Committee. The page citation at the conclusion of each proposed factual finding refers to the page in the particular witness' testimony before the Senate Impeachment Trial Committee.

ROBERTO MARTINEZ

670. In 1985, Martinez was an Assistant United States Attorney in the Southern District of Florida in Miami, working primarily on

public corruption matters. In particular, he was responsible for investigations involving corruption in Local 1922 of the International Longshoreman's Union at the port of Miami, corrupt zoning practices in Hialeah, and police corruption in North Bay Village. 1698-9.

671. The union investigation sought to probe allegations that kickbacks were being solicited in order to gain employment at the port, and allegations of narcotic trafficking at the port. 1699.

672. Union membership in Local 1922 was valued not only because of the employment benefits, but also because of the opportunity to use the port for illegal activities. 1699.

673. The union investigation was a spin-off of an earlier successful investigation in the 1970's, code named UNIRAC. The subjects of the 1985 investigation were related by family or business connections to the subjects of the earlier investigation. 1699.

674. Some of the targets of the union probe were alleged members of organized crime groups. 1700.

675. The union probe began with an informant, Johnny Rivero, now deceased, trying to make contacts with the union. Rivero reported back primarily to FBI Special Agent Geoffrey Santini. 1700.

676. The investigation relating to zoning corruption in Hialeah originally began with an overt investigation in February, 1985. Because that method proved to be unproductive, the FBI withdrew its presence for several months, to give the impression to the political figures in Hialeah that the investigation had been dropped. 1702.

677. In fact, at that point, an undercover operation was set up, utilizing a business named "Photon," to further the investigation of zoning corruption in Hialeah. Photon was and is a legitimate amusement project involving a laser tag-type game, which required a building with substantial indoor space. Because of the space and equipment needs of the project, certain permits and licenses would be required from the municipality. Accordingly, the project was well-suited to determine if payoffs were necessary to obtain the required permits, licenses and zoning variances. 1702-1703.

678. Rivero was instructed to and did ask one of the subjects of the Hialeah probe, Kevin Gordon, if he would find a location in Hialeah that would be suitable for that type of project. 1704.

679. Later, Rivero introduced an FBI undercover agent, "Gino," to Gordon. Gino pretended to be a developer consultant from Houston who had come to Dade County to ensure that prior to the commitment

of the investment in the project, that the necessary licenses and permits would be taken care of. 1704.

680. The investigation into police corruption in North Bay Village derived from information obtained from a subject, Stephen Nahay, who described himself as a member of La Cosa Nostra. Beginning in late July, 1985, a decision was made to target that problem. 1705.

681. An FBI undercover agent, Dan Kingston, posing as someone interested in running cocaine through south Florida, was introduced to Nahay by Rivero. Kingston told Nahay that his people wanted to off-load the drugs, but only if they were assured that the police would protect the operation. 1705.

682. Kevin Gordon, also known as "Waxy," was introduced to Rivero by Nahay in late April, 1985. Gordon was a zoning inspector for the City of Surfside. Gordon had told Rivero that he had contacts at the waterfront who could assist Rivero in getting admitted to the union. One of the first contacts he mentioned was Peter Ferguson, then the campaign manager for Mayor Stephen Clark. 1706, 1841.

683. Gordon's connection to the Hialeah probe developed later, when he told Rivero that he would be able to obtain special permits in zoning matters because of his influence. Because of this, Rivero later asked Gordon to assist Gino on the Photon project. 1707.

684. In August, 1985, Gordon introduced Rivero to Mayor Clark, who indicated that he had a contact in Hialeah, a councilman. 1707.

685. Although Gordon indicated that he was aware that there were corrupt police officers in North Bay Village, and attempted to get the police protection which the agent had requested, the investigators later determined to pursue the police corruption case by using Nahay, since Nahay was personally acquainted with the corrupt officers. 1707-8.

686. In June, 1985, in connection with the union probe, Martinez began the process of preparing the application and affidavit in support of a wiretap. After the Department of Justice had approved the request, Martinez presented the application to Judge Hastings, who was the duty judge for the month of July. 1701, 1709-10.

687. Martinez thereafter prepared progress reports based upon information provided by Agent Santini. The usual practice was for Martinez to hand deliver these reports to Judge Hastings. The judge would then sign the Report and Sealing Order in his presence. Thereafter, Martinez would give the Report and Sealing Order to the clerk, and receive a certified copy. 1716.

688. The first reference to Mayor Clark in the wiretap documents presented to Judge Hastings was as follows: In House Exhibit 161,

the July 15, 1985 affidavit of Geoffrey Santini, at page 23, footnote 7, Peter Ferguson, whom Gordon claimed as his contact for helping Rivero get into the union, is identified as Mayor Clark's campaign manager. 1720.

689. The second reference to Mayor Clark appears in House Exhibit 168, the Second Progress Report, dated July 29, 1985, at page 13, where Gordon is reported as having told Rivero that with respect to a business situated in the area where Photon might be established, that "We cheated a little to get him in there to begin with. He's a friend of the mayor's." The only mayor that the investigators were aware of relative to the probe was Mayor Stephen Clark. 1722-23.

690. While reviewing the Second Progress Report with Judge Hastings, Martinez specifically directed the judge's attention to the reference to the mayor, since this pertained to new criminal activity not specifically authorized by the wiretap order. 1723-24.

691. In the Fourth Progress Report, House Exhibit 170, appears the next reference to Mayor Clark. At page 9, Gordon is reported as claiming that he has Mayor Clark in his pocket, and that he could approach him to obtain police assistance in off-loading narcotics. At page 10, Gordon is quoted as telling Rivero that Ferguson, Clark's campaign manager, had gotten his son a job on the docks by making a payoff. 1724-25.

692. House Exhibit 173, the affidavit in support of the extension for the wiretap, contains the same references to Mayor Clark that had appeared in the earlier reports. 1725.

693. House Exhibit 178, dated August 22, 1985, the First Progress Report presented following the extension of the wiretap, contains the following reference to Mayor Clark at page 8, footnote 1: In a meeting of Gordon, Gino and Rivero, regarding taking care of zoning problems for the Photon project, Gordon stated that cash, probably as much as $10,000, would have to be paid to the mayor of Hialeah, who is "a close friend of Steve Clark." 1728.

694. House Exhibit 179, the Second Progress Report following the extension of the wiretap, dated August 29, 1985, contains the following reference to Mayor Clark in footnote 1, pages 3-4: At a gathering at the MOC attended by Rivero, Gordon, Ferguson, Mayor Clark and others, Gordon introduced Rivero to Clark. Later, Gordon told Rivero that Stephen Clark would take care of the Hialeah matter, and Clark then said, "If you have any problems with that thing in Hialeah get in touch with me." When asked by Gordon for the "name of the guy," Clark responded, "Silvio Cardozo. If you have any problems with him, get back in touch with me." 1732.

695. Silvio Cardozo was suspected of being involved in corrupt activities. 1794.

696. Martinez handed this report to Judge Hastings on August 29, 1985, while he was on the bench. Judge Hastings then indicated that he wanted to speak to Martinez, and they then went to the judge's chambers. 1730.

697. Once in chambers with Martinez, Judge Hastings stated, "Pretty heavy stuff." Martinez replied, "Do you mean Mayor Clark?" and the judge answered affirmatively. 1730.

698. Martinez then told the judge that Mayor Clark was not the target of the investigation, that he had been introduced by Gordon to Rivero as someone with contacts to Hialeah Councilman Silvio Cardozo, who, according to Gordon, would have to be taken care of in order to obtain zoning and licensing changes. 1730-1.

699. Judge Hastings then indicated that he had heard that there were Hispanic politicians in the area that were involved in corrupt zoning practices. 1731.

700. Martinez further explained to Judge Hastings the nature of the Hialeah zoning investigation, that Gordon appeared to be well-connected, that he had claimed to have made illegal influence payments in the past and that he would do so in this case for Rivero and Gino in connection with the Photon operation. 1733.

701. After Martinez remarked that Mayor Clark had walked into the picture when Gordon introduced him to Rivero, and that was the extent of it, Judge Hastings remarked: "Clark better be careful because he could get in trouble hanging around Waxy." 1733.

702. House Exhibit 180, the Third Progress Report following the extension of the wiretap, dated September 5, 1985, contains the following references to Mayor Clark: At paragraph 8 is related a conversation in which Gordon tells Gino that he had made a connection with the Hialeah Zoning Commission through Mayor Clark, and that if they had any zoning problems, they would be handled. At page 5, Gordon is reported to have told Rivero that he had given Gino the whole story about the mayor and Hialeah. On page 7, footnote 2, while inspecting sites in Hialeah, Gordon is reported as again saying to Gino that Steve Clark's man in Hialeah was Cardozo. 1738-40.

703. After presenting the September 5th report to Judge Hastings, Martinez told the judge that they would not be seeking a further extension of the wiretap. 1741.

704. On September 9, 1985, while attending a meeting with FBI agents to discuss the first dummy off-load of narcotics in connection with the North Bay Village investigation, Martinez

learned from Agent Santini that there was a problem with the wiretap, that it appeared from an intercept that Judge Hastings had leaked the wiretap. 1743.

705. Martinez then notified U.S. Attorney Kellner. At a subsequent meeting with Kellner, the problems of what to do about the existing undercover operations and how to handle the next approaches to Judge Hastings were discussed. 1744.

706. Kellner immediately notified the Public Integrity Section of the Department of Justice, since it is the policy for U.S. Attorney's offices not to investigate sitting federal judges. Representatives from the Public Integrity Section came to Miami the following day, and met with the FBI and the U.S. Attorney's office. 1745.

707. It was decided that the next progress report would be submitted to Chief Judge King, and that Judge Hastings would be given a redacted version of the report, which omitted references to the leak. 1745-6.

708. As a result of the leak, both the ILA and Hialeah zoning investigations appeared to be compromised and had to be terminated, since Gordon was a central figure of those cases, and it was Gordon who had learned of the leak. 1746-7.

709. Stipulations admitted into evidence:

a. Local 1922, located in Miami, Florida, is a chapter of the International Longshoremen's Association.

b. WAXY are the call letters of a radio station in Miami, Florida.

c. In 1986, Stephen Clark had been Mayor of Dade County, Florida for a total of 14 years, from 1970 to 1972, and from 1974 to 1986.

d. Peter Ferguson was Mayor Clark's campaign manager in 1985 and 1986, among other years. At that time he was also Marketing Director for Fiscal Operations of the Port of Miami.

e. Kevin "Waxy" Gordon was the zoning code enforcer for the City of Surfside, Florida in 1985 and early 1986, among other years. Sometime prior to 1985, Gordon had retired from his position as a code enforcement officer for the City of Miami, Florida.

f. In 1986, Mayor Clark had known Kevin "Waxy" Gordon since the late 1960s.

g. 18 U.S.C. 2517(5) requires judicial approval of the investigation of criminal activity discovered as a result of the wiretap if that criminal activity was not included in the original application for the wiretap.

h. The U.S. Attorney's Office presented Judge Hastings with weekly progress reports, dated July 22 and 29, and August 5 and 12, 1985, describing the information obtained from the wiretap authorized on July 15, 1985, and information obtained from other investigative techniques.

i. Assistant U.S. Attorney Roberto Martinez met with Judge Hastings with respect to the First Progress Report on July 22, 1985, at which time Judge Hastings reviewed and signed the report and entered an order placing under seal all the information contained in the report.

j. Assistant U.S. Attorney Martinez met with Judge Hastings with respect to the Second Progress Report on July 29, 1985, at which time Judge Hastings reviewed and signed the report and entered an order placing under seal all the information contained in the report.

k. Assistant U.S. Attorney Roberto Martinez met with Judge Hastings with respect to the Third Progress Report on August 5, 1985, at which time Judge Hastings signed the report and entered an order placing under seal all the information contained in the report.

l. Assistant U.S. Attorney Jon A. May met with Judge Hastings with respect to the Fourth Progress Report on August 12, 1985.

m. Judge Hastings signed the Fourth Progress Report on August 13, 1985 and at that time entered an order placing under seal all the information contained in the report.

n. On August 21, 1985, Johnny Rivero introduced Kevin "Waxy" Gordon to "Gino", an undercover FBI Special Agent posing as a Houston-based entrepreneur who wanted to set up the amusement operation. Gino was being impersonated by FBI Special Agent Richard J. Giannotti.

o. Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the First Progress Report after the extension of the wiretap on August 22, 1985.

p. Judge Hastings signed the First Progress Report after the extension of the wiretap on August 22, 1985 and at that time entered an order placing under seal all the information contained in the report.

q. Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the Second Progress Report after the extension of the wiretap on August 29, 1985.

r. Judge Hastings signed the Second Progress Report after the extension of the wiretap on August 29, 1985, and at that time entered an order placing under seal all the information contained in the report.

s. Judge Hastings signed the Third Progress Report after the extension of the wiretap on September 5, 1985 and at that time entered an order placing under seal all the information contained in the report.

710. Because he believes there was a certain amount of betrayal by Judge Hastings, Martinez now finds it difficult to talk to Judge Hastings. 1771.

*711. Following the interception of Gordon's telephone call which alerted the investigators to the leak, the investigators determined that the best way to ascertain whether or not the leak could have come from someone other than Judge Hastings was to put Gordon in a position to go to the source of his knowledge, Mayor Clark. In addition, the investigators wished to conduct the probe in such a way to maintain the confidentiality of the information and to avoid stigmatizing Judge Hastings. 1775-77.

712. After the leak, no political corruption matters, wiretaps, or in camera submissions of sensitive matters were presented to Judge Hastings, so far as Martinez was aware. 1789-90.

713. The redacted order that the telephone company receives states only that a federal judge has authorized the interception of certain telephone facilities. Neither the individuals nor the nature of the criminal activities are listed. 1809.

*714. Martinez has never been aware of any reason to believe that anyone in the U.S. Attorney's office was the source of the leak. 1810.

*715. Members of Judge Hastings' staff were not interviewed following the leak because of a concern that the disclosure be minimized. 1810.

716. On November 20, 1985, Gordon signed a plea agreement prepared by Martinez, which provided that in exchange for not being prosecuted for violations of the narcotics laws, Gordon would cooperate with federal investigators and would plead guilty to some federal criminal violation. 1813.

*717. Martinez believes that Judge Hastings leaked the information to Mayor Clark in order to do Clark a political favor, since he likes to do favors and get favors in return. 1814.

*718. Martinez believes it would be dangerous for Judge Hastings to remain on the bench because as a sitting judge he has to receive confidential law enforcement information. This conclusion is based solely upon his experience in this case. 1815-17.

*719. Martinez' conclusion that Judge Hastings did leak the information to Mayor Clark is based upon several facts: the Mayor stated that Judge Hastings was his source, not only in sworn testimony, but in a recorded conversation with Gordon; Mayor Clark had no motive to make this up; because the only substantive conversation which Martinez had with Judge Hastings about the wiretap dealt with Mayor Clark, and occurred only about a week before the leak. Moreover, the progress report presented to the judge on September 5th indicated that the investigation of Hialeah and Mayor Clark's seeming connections with that case were heating up. 1816.

*720. At the time of the leak, Martinez believed that the evidence pointed to Judge Hastings as the source, but he tried to give him the benefit of the doubt. The evidence later obtained from Gordon and Clark supported this conclusion. 1818.

*721. At the time the leak became known, Martinez did not know of anyone other than Judge Hastings who had a reason to make the disclosure to Mayor Clark. 1821.

*722. There were only a limited number of people who had knowledge of the matters that were contained in the disclosure, i.e. that it pertained to Clark, Gordon and Hialeah. That information came from a discussion between Clark, Rivero and Gordon which was not recorded, so the agents at the plant would not necessarily have knowledge of it. Only Martinez, Santini, Rivero, Mazzella and two other agents working with Agent Santini, Guy Nottoli and Frank Navas, would know those facts. A determination was made that no one from this core group had made the leak. 1822, 1826-8.

*723. The degree to which FBI agents working on major cases keep their knowledge strictly to themselves, even within the office, depends upon the degree of sensitivity of the matter. The political corruption squad held things very close, the squad was small and was housed in office in the basement of the FBI building. 1822-3.

724. Following the disclosure of the leak, Martinez believed that the best investigative opportunity was to approach Gordon, rather than go on a fishing expedition to explore any other possible source. 1825.

GEOFFREY SANTINI

725. Beginning in 1985, the Public Corruption and Labor Racketeering Squad of the FBI in Miami undertook investigations into public corruption in the City of Hialeah and corruption in the Longshoreman's Union. 1839.

726. Geoffrey Santini was the case agent in both of these investigations, Christopher Mazzella was the supervising FBI agent, and Roberto Martinez was the Assistant U.S. Attorney assigned to the case. 1839-1840.

727. Santini was also involved in the FBI investigation of police corruption in North Bay Village, Florida. 1845.

728. Santini prepared the probable cause section of the application for the wiretap which was presented in July, 1985. That information was based upon information received by Santini from informant Johnny Rivero. 1840.

729. The affidavit in support of the application for the wiretap was prepared by Santini and Martinez. 1840.

730. On July 15, 1985, Santini and Martinez personally presented the application to Judge Hastings. 1840-41.

731. The probable cause section for the application for the thirty day extension of the wiretap was also prepared by Santini. 1841.

732. Mayor Clark was referred to in the application for the extension of the wiretap several times. In the reference where Gordon told Rivero that he had Mayor Clark in his pocket, Gordon also claimed that he had raised $40,000 in contributions for the mayor, and that Gordon was going to approach the mayor for assistance regarding the off-loading of narcotics. 1841-42.

733. Later, after Gordon was cooperating with the FBI, he stated that the true amount of the contribution was $4,000, and that his other claims regarding Clark were enhancements to try to win the confidence of Rivero. 1842.

734. Santini presented the application for extension of the wiretap to Judge Hastings on August 15, 1985 with Assistant Attorney General Jon May, in the judge's chambers. 1843.

735. At that meeting, Judge Hastings told Santini that at first, he thought "Waxy" Gordon was the radio station. At that time, there was a radio station in Miami with the call letters "WAXY". 1844.

736. Santini and Judge Hastings then discussed the minimization of telephone calls at Gordon's office, which was at the City of

Surfside, and Santini advised that the calls were being intercepted on these lines only during the hours that Gordon was present. 1844.

737. Judge Hastings then stated to Santini that Waxy Gordon is like the radio station; that if he doesn't keep his mouth shut, he is going to get everyone into trouble, including Mayor Clark. 1844.

738. Santini met Rivero in 1982 in another investigation. After Santini was transferred to Miami, Santini asked Rivero to help with the ILA investigation by infiltrating the docks. 1846.

739. Rivero acted in an undercover capacity for the FBI, although he was under no legal or other obligation to do so. 1846.

740. Santini was in constant direct contact with Rivero, both day and night. 1846.

741. Santini gave Rivero his orders and debriefed him. 1846.

742. Rivero's situation was dangerous because he was dealing with some of the same figures which the earlier UNIRAC investigation had revealed to be organized crime figures or their relatives. Their potential for violence had been documented in the previous investigations. Since the FBI couldn't follow Rivero out onto the docks, he would be exposed to all the dangers from these individuals. 1848.

743. Rivero's position was also dangerous because of the fact that the North Bay Village investigation involved armed, corrupt police officers, who could have shot Rivero and taken the drugs. 1848.

744. The undercover agents involved in the investigations faced the same dangers as Rivero. 1859.

745. Although the individuals in the Hialeah public corruption investigation were not violent, there was the possibility that if Rivero was exposed to these targets, they might reveal this to the people involved in the dock investigation, whom they knew. 1849.

746. The dangers to Rivero were set forth in the applications and progress reports submitted to Judge Hastings. These reports revealed that the union officials were extremely wary of anyone trying to gain admission to the union; Rivero had been patted down for recording equipment many times, including once by an organized crime figure whom the FBI intended as the recipient of the payoff to obtain Rivero's union employment. This pat-down was observed by North Bay Village police officers. 1849-50.

747. With respect to the wiretap, the monitoring FBI agents contacted Santini when a telephone call of interest was intercepted, and Santini would then take action. Santini and other agents reviewed all the tapes on the following day. 1850.

748. On September 6, 1985, at 8:58 a.m. a call between Kevin Gordon and Peter Ferguson was intercepted. 1851.

749. House Exhibits 185A and 185B are the tape and transcript of that call, in which Ferguson tells Gordon that Mayor Clark would like to see him at the Miami Outboard Club (MOC) at 11:30 a.m. that day. 1852.

750. Rivero was instructed by Santini to go to the MOC on September 6, to try to find out the reason Mayor Clark wanted to meet with Gordon. Rivero reported that after the meeting Gordon was extremely upset and avoided Rivero. 1857.

751. On September 9, 1985, while in a meeting with other agents to discuss the first scenario to off-load narcotics using North Bay Village police officers, Santini was advised that a call had been intercepted which indicated that Judge Hastings had leaked the wiretap. 1853.

752. Santini ordered the agent to remove, copy and seal the tape, and to bring the original log and copy of the tape to the office where the meeting was being held. 1853.

753. House Exhibits 186A, 186B, 187A and 187B are the tape and transcripts of the relevant parts of the two calls between Gordon and Richard Bonehill that were intercepted on September 9, 1985. 1854-55.

754. The first call was at 9:23 a.m., the second at 11:04 a.m. 1854.

755. In the first call, Gordon told Bonehill that his meeting with Mayor Clark wasn't good news, although it was probably a favor, a tip off. However, he would call Bonehill back, since he couldn't go into it on the phone they were using. House Exhibits 186A and B.

756. In the second call, Gordon called Bonehill back and told him that Steve [Clark] told him that Alcee Hastings, a federal judge, had talked to him, and that there was a rumor that Gordon was involved with Clark, Ferguson and some councilman in Hialeah on some deal. Gordon then said that the only thing in which he was involved in Hialeah was on a new item for this guy from Houston. Gordon claimed that he still hadn't done anything illegal on the deal, and that although Hastings had said Clark was involved, he wasn't. Gordon then observed that for a federal judge to know of the matter, it had to be "pretty high in the Justice Department or someplace." The deal in Hialeah that Gordon was working on had to do with mitigating a zoning problem. Bonehill noted that the investigation into zoning in Hialeah had been a big deal in the newspaper six or seven months earlier. Gordon then wondered aloud

how his name had been put to it. He further claimed that he had been given a bad check by the guy from Houston. House Exhibits 187A and B.

757. After listening to the tape, Santini immediately contacted Johnny Rivero and instructed him to watch out for himself, that there could be a problem, and to try to contact Gordon to find out what was going on. 1857.

758. FBI agents were then sent to cover Rivero. 1857.

759. On the following day, September 10, 1985, Rivero met with Gordon. Gordon was very upset, and he patted Rivero down. He then told Rivero that on the previous day, Mayor Clark had asked him if he knew Kevin Gordon, and then told him that Gordon's home and Surfside phones were wired. Gordon told Rivero that he didn't know where this information was coming from. 1858, 1865.

760. Rivero immediately called Santini, who instructed him to gain as much information as possible, leave Gordon, "clean" himself and go to a safe house, which he did. 1858.

761. Prior to September 6, 1985, there was no change in the behavior of Gordon which indicated any leak of confidential information obtained from the wiretap. The investigation up to that point was proceeding very well, and additional crimes in many areas were being discovered. 1859-60.

762. Immediately after the meeting at the MOC between Gordon and Clark, problems began. Gordon became extremely wary of both Rivero and Gino, the undercover agent in the zoning matter. 1860.

763. His oath of office and his own conscience would preclude Agent Santini from placing undercover agents and informants into dangerous situations, and therefore he will no longer present applications for wiretaps to Judge Hastings. 1861.

764. Gordon never knew that Rivero was an informant, even after Gordon was cooperating with the FBI. 1865.

765. When Gordon was arrested, it was made to appear that Gino was the informant; Rivero was also arrested, so as to lead Gordon to believe that he was not an informant. 1874.

766. Gordon immediately agreed to cooperate. Since only the U.S. Attorneys office could enter into a plea agreement, that occurred after the initial debriefing. 1874.

767. Gordon could have been arrested if he had not agreed to cooperate. 1875.

*768. At his debriefing, Gordon told Santini that he presumed there was a wiretap on his phones from the information he had received, but that Clark had not told him that there was a wiretap. 1865-66.

769. The debriefing of Gordon began on November 18, 1985, and the plea agreement was negotiated with Assistant U. S. Attorney Martinez and the Public Integrity Section on November 20th. 1874.

770. Gordon's cooperation was sought both with respect to the leak investigation and the other criminal matters that had been uncovered. 1875.

771. Gordon was told that he would have to become directly involved with Mayor Clark and make consensual recordings to document Clark's statement to him. 1876.

772. Both Gordon and Rivero died of natural causes. 1894.

773. In September, 1985, Santini was aware of the July 23, 1985 conversation between Glen Whittle and Agent Dowd. 1896.

*774. Santini never discussed any information regarding these investigations to anyone other than Judge Hastings, and persons in the FBI and U.S. Attorneys Office. 1896.

775. Neither Santini nor any of the other agents working with him on these investigations were friendly with Mayor Clark. Santini has no knowledge of any of those agents telling any agents that did know Clark anything about the investigation. 1897.

STEPHEN CLARK

776. Stephen Clark is the Mayor of Metropolitan Dade County, Florida. He has held that position from 1970 to 1972 and again from 1974 to the present. 1898-99.

777. On September 6, 1985, Mayor Clark attended a meeting of the Metro Miami Action Plan. MMAP, as it is known, is an organization concerned with trying to create parity between the black community and the rest of the community with respect to education, employment, criminal justice, and housing. 1899.

778. Mayor Clark, one of the founders of MMAP, was at the September 6th conference in order to receive an award. 1899.

779. The program of that conference is set forth in House Exhibit 189. 1900.

780. Mayor Clark has known Judge Hastings since 1970. He met him when Judge Hastings was running for the U.S. Senate and Stephen Clark was running for Mayor. They do not see each other socially, and their contacts have been at occasional conferences and meetings. 1901.

781. On September 6, 1985, Judge Hastings was the guest speaker at the MMAP conference, and he made his speech after the presentation of the awards. 1901.

*782. After Judge Hastings had made his speech, he left the podium and came toward Mayor Clark. The audience was breaking up at that time. Judge Hastings stuck out his hand. Mayor Clark then said, "Hello Judge." As Judge Hastings was moving towards the exit in the back of the room, he said to Mayor Clark in a low tone, "Stay away from Kevin Gordon, he's hot, he's been using your name in the Hialeah area." 1901-2.

*783. Mayor Clark did not respond at all. He was astounded. 1902.

784. Mayor Clark knew Gordon as a result of his having been the code enforcement officer for the City of Miami for lighting, street striping, setbacks, etc. As a general contractor, Stephen Clark had to deal with him on occasion to process plans through Gordon's department. 1902.

*785. After his encounter with Judge Hastings on September 6th, Mayor Clark called Peter Ferguson, and asked him if he knew how to contact Kevin Gordon, and that if he could, to ask him to meet the mayor at the Miami Outboard Club (MOC) at 11:30. 1903.

*786. At the lounge of the MOC, Mayor Clark went up to Gordon and said, "What are you trying to do to me? I understand you're using my name for influence out in the Hialeah area, and if you are, you'd better stop." 1903.

*787. Gordon denied doing anything like that. Mayor Clark then stated to Gordon that he had it from a "very authoritative source that you're using my name in the Hialeah area." Gordon kept pumping the mayor for the source of his information. Mayor Clark told him that it was from a federal judge. After further pumping, Mayor Clark finally told him it was Judge Alcee Hastings. 1904.

*788. Gordon's response to this information was to turn white and appear very shaken. The conversation then ended. 1904.

*789. In January, 1986, Mayor Clark again saw Gordon at the MOC. They had not seen each other, other than to say hello, since September 6th. In the January conversation Gordon asked if it really was Alcee Hastings. Although he did not know it at the time, this conversation was recorded, and the tape was played for him in February or March. 1905.

790. In that discussion, Mayor Clark told Gordon that when he was at the Hyatt Regency, Judge Hastings was the guest speaker; that while everybody was saying hello, the judge came over to Mayor Clark and told him he wanted to tell him something. He told Gordon that Judge Hastings then told him, don't get near Kevin Gordon -- Gordon is involved in some zoning in Hialeah. Don't get near it, because he's got problems. Mayor Clark then speculated that Judge Hastings might have known about this because Johnny [Rivero] was a plant. Mayor Clark noted that he had then told Gordon about it immediately. House Exhibits 194A and B.

791. During the conversation recorded on January 17, 1986, Mayor Clark could not recall Gordon's last name. House Exhibits 194A and B.

792. In February, 1986, the FBI came to Mayor Clark's home and questioned him about this matter. 1906.

*793. Initially, Mayor Clark was hesitant to name Judge Hastings as his source, but finally, he did so. The FBI asked if he was willing to cooperate, and he agreed to do so. 1907.

794. The FBI told Mayor Clark to avoid seeing or talking to Judge Hastings. A few days later, they asked him to wear a body recorder, but after thinking it over, and talking to his doctor, he declined, because of his high blood pressure. 1907.

795. Mayor Clark also refused the FBI's request that he talk to Judge Hastings on the phone or meet him in a restaurant. 1907-8.

796. Subsequently, Mayor Clark appeared before the grand jury, pursuant to subpoena. 1908.

797. Later, there was an article in the Miami Herald concerning Mayor Clark's appearance before the grand jury. That article, dated March 27, 1986, stated that the mayor had been asked in the grand jury if he had leaked information to a friend about a wiretap on the home phone of Kevin Gordon. Judge Hastings was mentioned as the judge who had authorized the wiretap, and was quoted as refusing to discuss the wiretap. 1908, House Exhibit 188.

798. Monsignor Bryan Walsh is shown on the MMAP program as giving the luncheon prayer, set for 1 p.m. 1911, House Exhibit 189.

799. Mayor Clark does not recall meeting or seeing Monsignor Walsh on September 6, 1985, prior to the start of the MMAP program. 1911.

*800. Mayor Clark recalls only one encounter with Judge Hastings on September 6th, the one about which he testified. 1911.

***801. Mayor Clark has no racial or personal bias against Judge Hastings. 1912.**

802. When Judge Hastings was being considered for the position of federal judge, Mayor Clark provided a reference in support of his possible nomination. 1912.

803. In 1985, Mayor Clark attended approximately 3 or 4 speaking events per week which included meals. 1912.

804. Mayor Clark was not interviewed by the FBI about the events of September 6, 1985 until February, 1986. Prior to then, he had not spoken to any law enforcement officers about the incident. 1912.

***805. Mayor Clark did not obtain any information about staying away from Kevin Gordon from anyone other than Judge Alcee Hastings. 1913.**

806. When Judge Hastings spoke to him on September 6, 1985, it was early in the morning. 1914.

***807. Gordon never gave Mayor Clark $4,000 in a paper bag. 1921.**

808. Mayor Clark recalls telling Gordon that he knew Silvio Cardozo in Hialeah, and that if he ran into any problems, that Mayor Clark would give him a call. Rivero may have been present for this conversation. 1922.

***809. The FBI agents who interviewed him never told him that the Justice Department had authorized his prosecution. 1923.**

***810. Mayor Clark was not offered any inducements to cooperate. 1923.**

***811. The only thing that the FBI told Mayor Clark that they were investigating was whether what Clark told Gordon at the MOC was true. 1923.**

812. Judge Hastings and Mayor Clark have never been in each others' homes or offices, nor does the mayor recall having ever conversed with the judge on the telephone. 1925-6.

813. In 1985, Mayor Clark played golf with a foursome that consisted of himself, FBI agent Anthony Amoroso, FBI agent Jerry Forrester, and Glen Whittle, an insurance man who has supported Mayor Clark. 1928-29.

814. In 1985, Mayor Clark also knew H. Paul Rico. They had played golf together on occasion. 1930.

815. Mayor Clark also knows FBI agent Tom Dowd, whom he met through Amoroso and Forrester. Because he has a notary's license, he married Dowd and his wife. 1930.

816. Mayor Clark has known Peter Ferguson for about 20-22 years. 1931.

817. Fiscal Operations, the company for which Ferguson works, leases cranes to the Port of Miami for the loading and unloading of ships. 1931-2.

*818. Mayor Clark has no knowledge of the call by Glen Whittle to Agent Dowd in July, 1985. 1932.

*819. At that time, Mayor Clark had no knowledge of any investigation into his affairs. 1932.

820. Mayor Clark and Gordon knew each other but were not constant companions. 1936.

*821. When Mayor Clark referred to "spooks" in his recorded conversation of January 17, 1986, he was referring to scurrilous or bad people, not black people. 1938.

822. Mayor Clark has never been arrested. 1940.

*823. Kevin Gordon was always bragging about a lot of things, although Mayor Clark didn't know him to be involved in accepting bribes to influence zoning matters. 1940.

*824. Mayor Clark did not follow Judge Hastings' advice to stay away from Kevin Gordon because he wanted to make sure it was the same Kevin Gordon, and he wanted to keep his name clear. 1941-2.

825. Mayor Clark had never solicited support from Judge Hastings in an election. 1942.

*826. Mayor Clark does not know what Hastings' motive was in warning him to stay away from Gordon. 1943.

*827. Although Mayor Clark has heard on other occasions that persons other than Gordon had been using his name, he attached some urgency to it because it came from a federal judge. Mayor Clark assumed that Judge Hastings must know something. 1945-6. *

*828. Although Mayor Clark didn't assume there was a federal investigation of Gordon, there had been a big investigation going on in Hialeah for two or three years prior to this time, and Mayor Clark didn't want his name involved. 1946.

829. As a result of his being mayor, Stephen Clark was permitted free use of the golf course and carts which he used to play with his regular foursome. 1949.

MONSIGNOR BRYAN WALSH

830. Monsignor Bryan O. Walsh is a priest of the Roman Catholic Archdiocese of Miami, President of Catholic Community Services and Catholic Health and Rehabilitation Services, and was a member of the Executive Committee of the Metro Miami Action Plan. 1984.

831. Monsignor Walsh attended the MMAP conference on September 6, 1985. 1984.

832. Monsignor Walsh arrived early at the conference, although he has no recollection of the actual time. 1985, 1989.

833. Before the program began, Monsignor Walsh was in the lobby area outside the meeting room. While there, at about the same time, Judge Hastings and Mayor Clark came up to him, greeted Monsignor Walsh and each other. The three engaged in casual conversation for a few minutes and then drifted apart. Monsignor Walsh has no recollection of whether Judge Hastings and Mayor Clark left together, or whether Judge Hastings said anything in Mayor Clark's ear. 1985-93.

CHRISTOPHER MAZZELLA

834. Christopher Mazzella is a supervisory special agent with the FBI. In 1984, he was designated the supervisor of a new squad in the FBI office to handle public corruption and labor racketeering matters. 1995-6.

835. In that capacity, Mazzella supervised the FBI's investigations of corruption within Local 1922 of the ILA, the Hialeah zoning probe, and police corruption in North Bay Village. These investigations were linked by common subjects and informants. 1996.

836. It was in connection with those investigations that a wiretap was sought and obtained from Judge Hastings on July 15, 1985. 1996.

837. Mazzella supervised the investigation of the leak of that wiretap which came to his attention on September 9, 1985. 1997.

838. After listening to the September 9th tape, Mazzella instructed Santini to try to get Rivero to corroborate this information independently from the wiretap. 1998.

839. When Rivero reported that he had learned from Gordon on September 10, 1985 that Mayor Clark had informed Gordon that Judge Hastings had warned Clark about the investigation, Rivero was extremely agitated and fearful. 1998-9.

840. At the time of the leak, the FBI's effort to get Rivero into the union was about to be assisted by the efforts of another informant, a high level official of the ILA, who had agreed to vouch for Rivero. This effort was designed to deal with the distrust of Rivero that had been evident. 1999.

841. After learning of the leak, Mazzella and Santini advised the ILA informant that the investigation might be compromised, and then gave him the option of going forward with the vouching. The informant decided he wanted no part of the effort. The ILA investigation was then totally terminated. 2000-2001.

842. The ILA probe had begun in September, 1984, and the undercover efforts were generated in March, 1985. 2001.

843. At the time of the leak, the FBI's probe of zoning corruption in Hialeah was going exceptionally well. The Photon scenario had been established with the assistance of that business, the undercover agent had successfully infiltrated the business community, and Rivero was making significant contacts with Gordon relative to corruption in Hialeah. 2002.

844. After September 6, 1985, the day of the leak, the Hialeah case took an almost 180 degree turn. Suddenly, Gordon was very suspicious of Gino and Rivero. Gordon told Rivero he did not want to do any further business with Gino. 2002.

845. Prior to September 6, Gordon had indicated not only his willingness to facilitate bribe payments, but had outlined specific plans to carry it forward. 2002.

846. Since Gordon was the central figure in the Hialeah probe, and would be the intermediary in the payoffs, after the disclosure to him became known, there was no alternative but to close this investigation down. 2003.

847. At the time of its termination, the FBI had been working on the Hialeah case for approximately eight or nine months. 2003.

848. Because of the need to investigate the leak, the investigation into police corruption in North Bay Village had to be terminated sooner than the FBI had wanted, and they were unable to use the undercover scenario in that case to expand the investigation. 2003.

849. Arrests were made in the North Bay Village case on February 27, 1985, and interviews in the leak investigation were conducted the following day. 2004.

850. The cost of the wiretap that was compromised was in excess of $300,000.00. In addition, the leak caused the waste of thousands of hours of agent personnel devoted to investigating these matters. The non-monetary losses included the fact that it will be more difficult to develop informants and cooperating witnesses in the future. 2004.

851. After decisions were made as to the course of the three on-going investigations, and after Rivero had corroborated the interception of September 9, 1985, the investigators decided to pursue the leak investigation by trying to further corroborate the information through contacts with the other participants in the September 6th conversation at the MOC, Mayor Clark and Peter Ferguson. 2005.

852. Since direct interviews of these individuals might produce a false statement that could not thereafter be corroborated, the investigators decided to use Rivero to make recorded conversations with them. 2005.

853. On October 11, 1985, Rivero was about to approach the mayor, when Ferguson and Stu Morrison prevented him from doing so. In that conversation, which was recorded by Rivero, Ferguson denied that Judge Hastings had told Mayor Clark anything. 2006, 2036-7.

854. Because Rivero then appeared to be under heavy suspicion, the investigators decided to seek Gordon's cooperation, since he was the only one who was close to the mayor who had direct knowledge of the September 6th disclosure. 2006.

855. Since a means to induce his cooperation was needed, the investigators decided to pursue Gordon's previously stated offers to Rivero to obtain narcotics. Although the FBI had always intended to pursue this area of investigation, they advanced this portion of the investigation in order to solidify his cooperation. 2007.

856. Rivero thereafter bought drugs from Gordon on several occasions. 2007.

857. On November 18, 1985, Gordon was confronted and he agreed to cooperate. 2008.

858. Gordon was then debriefed, and he agreed to cooperate fully both with respect to the leak investigation and any other matters in which he was involved. 2008.

859. With respect to the leak investigation, everything Gordon told the investigators confirmed the focus of the investigation as they had known it from the wiretaps. 2009.

860. Gordon told investigators that after Mayor Clark made the disclosure to him, he became suspicious of Gino, and went to check out Gino's local office. This statement corroborated something which had been picked up in an intercepted call of Gordon's right after the September 6th meeting, where Gordon stated that the meeting with Mayor Clark had gone bad, and the next day was also a very bad day. Gordon confirmed in his interview with the FBI that this had been the day he had checked out Gino's business, which had caused him to become concerned and upset. 2009.

861. Gordon consented to wear a body recorder and to entertain Ferguson and Clark in conversations about the matter. 2010.

862. On December 18, 1985, Gordon and Ferguson met and discussed this matter. In that conversation, Ferguson stated that he thought Rivero could not be trusted, that he was a DEA agent. With respect to Gino, Ferguson also voiced distrust. After Gordon asked Ferguson whom he thought was the source of the information, Ferguson concurs with Gordon that Judge Hastings was involved. 2014, House Exhibit 193A and B.

863. On January 17, 1986, Gordon recorded a conversation with Mayor Clark about the leak. 2014.

864. The content of the conversations Gordon recorded on December 18, 1985, and January 17, 1986, further confirmed that the focus of the FBI's leak investigation was correct. 2014-5.

865. Gordon died on February 20, 1986, of a heart attack, so further attempts to have him record conversations were precluded. 2015.

866. The day after the North Bay Village arrests, the leak investigation went overt, and the FBI conducted simultaneous interviews of Mayor Clark, Richard Bonehill, Peter Ferguson and Stu Morrison. 2015-6.

*867. All the information from these interviews corroborated the earlier evidence. 2106.

868. Mayor Clark initially consented to wear a body recorder and tape a conversation with Judge Hastings about the matter. However, upon further reflection, based upon health problems, he later declined. 2017.

869. Mayor Clark's testimony in the grand jury was consistent with the focus of the FBI's investigation of the leak. 2018.

870. Thereafter, the FBI interviewed three people who were listed on the program of the MMAP meeting of September 6, 1985. These interviews confirmed that Mayor Clark did receive an award, that after the award presentation he was seated in the front row of the audience, and that Judge Hastings did give a speech. There were conflicts among those interviewed as to the time and length of that speech. 2018-9.

*871. Only a limited number of interviews were conducted because of concerns about spreading rumors among the community about Judge Hastings and Mayor Clark. 2019.

*872. The investigation revealed that the call from Ferguson to Gordon on September 6, 1985, may have preceded the speech of Judge Hastings that day. However, that did not cause the FBI to change the focus of their investigation because all other evidence pointed to Judge Hastings having made the disclosure. 2020.

873. In his 25 years of experience, it has not been uncommon for a witness recalling a spontaneous situation to be unable to recall the timing accurately. 2020.

874. During the course of the investigation, Mazzella learned of no evidence that the leak had come from any source other than Judge Hastings. 2021.

875. Mazzella did learn of an inquiry to the FBI about a possible investigation of Mayor Clark in July, 1985. In that inquiry, Glen Whittle asked Agent Tom Dowd to confirm what Paul Rico, a former FBI agent, had told him, i.e. that Ferguson and Clark were under investigation. 2021.

876. Tom Dowd reported the conversation to his superior, and then, in his superior's presence, called Whittle and told him that he would not discuss the matter. Whittle then said that Rico was a great kidder. 2021-2.

877. Mazzella first learned of the inquiry from Whittle on July 23 or 24, 1985, the day of or the day after the inquiry. 2022.

*878. After learning of this, Mazzella talked to Dowd, who reported that he had no idea whether an investigation was going on, nor was he aware of the Title III wiretap. Dowd was in no way involved in the investigations which Mazzella was supervising. In fact, there was no investigation of either Ferguson or Clark at that time. 2022-3.

879. Thereafter, Mazzella asked Santini and the other agents to be aware of any possible problems that might arise. 2022.

880. In fact, in the period following the inquiry from Whittle, the case actually developed in great leaps and bounds, in that the

wiretap, starting on July 29th, started producing very productive intercepts. 2023.

881. In July, 1985, there were hundreds of agents assigned to the Miami office. The FBI frequently gets inquiries from outside asking whether someone is under investigation. 2023-4.

882. On May 19, 1986, Mazzella spoke to Judge Hastings about this matter. Judge Hastings had his court reporter listen in on the conversation, and make a verbatim transcript of the conversation. 2024.

883. In the conversation of May 19, 1986, Mazzella told Judge Hastings that the Public Integrity Section of the Department of Justice had asked him to contact the judge. He explained that the purpose of his call was to set up an appointment to discuss the matter discussed in an earlier Miami Herald article pertaining to the disclosure to Mayor Clark of a wiretap supervised by Judge Hastings. Mazzella advised the judge that he was the supervisor of the case agent, Geoffrey Santini, on the wiretap. 2028, House Exhibit 223.

884. Judge Hastings advised Mazzella that inasmuch as the subject pertained to a Title III matter, it would be unlawful for him to discuss the matter with Mazzella. 2028, House Exhibit 223.

*885. As the supervising agent of the investigation which was the subject of the wiretap, Mazzella had participated in the preparation of the affidavit and other documents presented to Judge Hastings relating to the wiretap, and he was privy to all the information gleaned from that wiretap. There was no legal reason why he could not discuss the wiretap with Judge Hastings. 2028-9.

886. Stipulations admitted into evidence:

a. On May 20, 1986, Eric Holder of the Public Integrity Section of the U.S. Department of Justice called Judge Hastings in order to interview him.

b. On May 20, 1986, in the telephone call with Eric Holder, Judge Hastings declined to be interviewed and stated that Holder would have to do whatever he planned to do without Judge Hastings' assistance and that he knew how the U.S. Department of Justice worked. Judge Hastings also asked Holder if he knew who Judge Hastings was.

c. Judge Hastings' sole source of the information about the actions and statements of Kevin "Waxy" Gordon and Gordon's relationship with Mayor Clark were the applications, affidavits and progress reports relating to the wiretap initially authorized by Judge Hastings on July 15, 1985 and which he extended on August 15, 1985.

d. According to the MMAP Third Annual Conference program, registration for the conference began at 7:30 a.m. on the Terrace Level of the Hyatt Regency Hotel.

e. During registration for its Third Annual Conference, MMAP served a continental breakfast in the Promenade area on the Terrace Level of the Hyatt Regency Hotel.

887. Ferguson was not a subject of the investigation. His name appeared twice in the submissions presented to Judge Hastings, but the FBI was not exploring the possibility of using Ferguson to purchase a place on the docks for Rivero. 2034.

888. The purpose of the telex to FBI Headquarters, dated March 3, 1986, Respondent's Exhibit 51, was to respond to the request by Headquarters to justify placing a body recorder on Mayor Clark to record Judge Hastings. 2080.

889. Among other things, the telex points out that the Department of Justice previously had authorized the prosecution of Mayor Clark under 18 U.S.C. 1001 (lying to federal officials). This authority had been obtained in discussions with Eric Holder and John Campbell of the Public Integrity Section of DOJ, and pertained only to Mayor Clark. Since this authorization was relevant only if Mayor Clark did not tell FBI investigators the truth when he was interviewed, the authority became moot. 2046-2053.

890. The authority to prosecute for 18 U.S.C. 1001 violations usually is obtained from the U.S. Attorney's Office. In this case, since the case was being handled by the Public Integrity Section, their authorization was needed. 2083.

*891. There was an apparent leak following the grand jury testimony of Mayor Clark. However, it would have been futile to interview the reporter who wrote the story about the grand jury proceedings to obtain the name of his source. 2059.

892. At the time Mayor Clark was interviewed, the FBI had no leverage on Clark other than the fact that he had been recorded talking to Gordon about the disclosure from Judge Hastings. At the time of his interview, Mayor Clark was not aware that this previous conversation with Gordon had been recorded. 2077-8.

893. In Mazzella's view, Clark had no reason to lie about Judge Hastings being his source of information, and no reason not to cooperate with the FBI. 2077-8.

894. In the telex to FBI headquarters, dated May 1, 1986, Respondent Exhibit 50, Mazzella disagreed with the Public Integrity

Section's decision not to prosecute Judge Hastings, and he urged that the FBI seek reconsideration of that declination. 2070-72.

895. The Justice Department originally declined prosecution of Judge Hastings on April 4, 1986. Following the May 1 telex requesting reconsideration of that declination, the Department was contacted by FBI Headquarters. However, the declination was not reversed, and Mazzella was advised of this about two to three weeks after the May 1 telex, which was prior to Mazzella speaking to Judge Hastings on May 19, 1986. 2073-4, 2090-1.

896. Although Mazzella knew it was unlikely that the Department would reverse its declination, he thought it was worth a try, and that the full extent of the consequences of the disclosure ought to be recorded. 2088.

*897. The Department did not decline to prosecute Judge Hastings because it didn't believe Mayor Clark. Therefore, whether or not Peter Ferguson would eventually corroborate Mayor Clark was not a factor which would have affected that decision. 2089.

898. The FBI knew that Ferguson was lying when he was interviewed by agents on February 28, 1986, because his statements were in conflict with his recorded conversations of December 18, 1985 with Gordon. In addition, the FBI had been told by Mayor Clark that contrary to Ferguson's denial of knowledge about the matter, Ferguson was present when Mayor Clark discussed the leak with Gordon on September 6, 1985. 2086-7.

*899. When Mazzella called Judge Hastings on May 19, 1986, he did so at the request of the Public Integrity Section, because of their expectation that they would be filing a complaint with the Eleventh Circuit, and their desire to round out the allegations and give Judge Hastings an opportunity to give his statement. At this point, there was not an active criminal investigation of Judge Hastings, so that when Mazzella told the judge that he was not being investigated, in Mazzella's view, he was not. 2092-3.

900. In 1985, and prior to that time, Mayor Clark was not the subject of any criminal investigation, so far as Mazzella was aware. 2095-6.

901. At the time of his interview, Mayor Clark was advised that he was not the subject or target of the investigation, that the FBI wanted to talk to him as a witness, that he would need to be truthful, and that if he were not, it would be a crime to lie to an FBI agent. He was not advised of the previously obtained authority to prosecute him if he did lie. 2096, 2103.

902. Neither Mazzella nor anyone else he works with has any animus toward Judge Hastings. Following his acquittal, he had no problem

with going to Judge Hastings on the wiretap application. 2102, 2112.

903. Mazzella believes that Judge Hastings disclosed the information to Mayor Clark because he thought the mayor would be injured by this investigation, and in view of Judge Hastings' own problems in the past, he felt it was necessary to warn Mayor Clark. 2122-3.

*904. Although Mazzella did not write the teletype dated May 19, 1986, he believes that the statement therein that Mayor Clark had not been completely cooperative refers only to the fact that he had refused to wear a body recorder. 2126-7.

*905. Notwithstanding the statement in that teletype that prosecution had not been declined, at the time Mazzella was of the opinion, based upon his earlier conversations with the Department, that prosecution had been declined. 2129.

906. Mazzella's initials and date on the teletype indicate that he reviewed it on May 21, 1986, which was after he had spoken to Judge Hastings. 2131.

CHIEF JUDGE LAWRENCE KING

907. Chief Judge King has been a Federal District Court Judge since 1970, and the Chief Judge of the Southern District of Florida for the past five years. 2139, 2178.

908. After Assistant U.S. Attorney Martinez explained the situation, Chief Judge King agreed that it was appropriate to submit progress reports to him, and to provide Judge Hastings with redacted versions. 2143.

909. Chief Judge King has not read the records from Judge Hastings' court, so he is not in a position to express a view as to his capability as a trial judge. Since Chief Judge King does not know or talk to many attorneys now, he is also not a good person to express an opinion about Judge Hastings' reputation in the community. 2150-51.

910. Since 1970, Chief Judge King has not heard of any other allegations resulting in a judicial or impeachment inquiry that a judge leaked the contents of a wiretap. 2167.

911. Chief Judge King knows of no other instance where the leak of a wiretap resulted in the complete shutdown of a federal or state covert operation. 2178.

912. Judge Hastings met with Chief Judge King after the Miami Herald article appeared in March, 1986, which described the leak

of wiretap information to Mayor Clark. Judge Hastings was very angry, but Chief Judge King does not know when Judge Hastings learned of the leak, or whether he was indignant because of the disclosure or because of the suggestion that he was involved. 2145, 2167.

913. As a judge, Chief Judge King has come to lead an almost monastic life, because of both the workload and his responsibilities as a judge not to discuss pending matters. It would be improper for him to discuss the merits of any pending case, and improper for him to attend a political fund raiser. 2180-82.

914. Chief Judge King tells his law clerks exactly what he wants in the orders that they prepare for him. 2185.

PATRICIA THOMAS

915. For the MMAP conference held on September 6, 1985, at the Hyatt Regency in Miami, the registration and continental breakfast area was set up beginning around 6:45 a.m. in the promenade area outside the ballroom where the conference was held. In that promenade area, conference participants gathered and spoke to one another. 2197-8.

916. A room was set aside for the program participants, next to the MMAP staff office, outside the ballroom, where telephones were available. 2199.

JOY VICKERS

917. The Gardenia Rooms, as shown on House Exhibit 190, were set aside for conference participants and speakers. 2215-6.

918. Prior to picking up Judge Hastings at his room at the Hyatt Regency, Vickers does not know where he had been that morning. 2220.

919. Vickers did not contact the FBI after reading an article in the Miami Herald which indicated that Judge Hastings had been the source of a wiretap leak, even though she realized when she read that article that it could not have occurred as indicated because she had escorted him out of the hotel that morning after his speech. She did, however, tell Judge Hastings about this when she spoke to him later. 2217-21.

JUDGE ALCEE HASTINGS

920. Judge Hastings saw Mayor Clark on the morning of September 6, 1985, at the Hyatt Regency, prior to the start of the MMAP program. They met and spoke in the promenade area prior to Judge Hastings' going back to his room to await the staff person who would take him to the meeting. 2237-8.

921. All of the knowledge Judge Hastings has about the Hialeah investigation involving Mayor Clark and Peter Ferguson came from the wiretap progress reports. 2244.

922. The testimony of Martinez and Santini regarding their discussions with Judge Hastings about the contents of the progress reports are essentially accurate. Judge Hastings specifically confirmed that on August 15, 1985, he read in the progress report that Gordon said that he had Mayor Clark in his pocket, and Judge Hastings then commented to Santini that Waxy Gordon was like the radio station of that name, that if he didn't stop talking he was going to get everyone, including the mayor, in trouble. 2251.

923. Judge Hastings also confirmed that on August 29th, he said to Martinez that if Waxy didn't stop talking, he's going to get the mayor in trouble, and that this was "pretty heavy stuff." 2252.

924. Judge Hastings signed the Progress Report of September 5, 1985 on that same day. He had read that report, which contained three references to Mayor Clark. He agrees that these references correspond to what Stephen Clark claims to have been told the following day by Judge Hastings at the MMAP conference. 2254-58.

925. Judge Hastings commented about Mayor Clark at the time the progress reports were presented because he was the only political figure mentioned in the reports. 2242.

926. Judge Hastings knew that the information in the wiretap reports were very confidential and highly sensitive, as wiretap information always is. 2248.

927. Judge Hastings believes that a judge is legally and ethically bound to maintain the confidentiality of wiretap information, and that a judge who does reveal such information should be removed from the bench. 2249, 2315.

928. Judge Hastings does not know why Mayor Clark would say Judge Hastings was his source of information; he knows of no grudge or vendetta or other purpose on Mayor Clark's part to seek to harm Judge Hastings. 2260-62.

929. Judge Hastings agrees that if the mayor's source were someone other than Judge Hastings, once Mayor Clark got the information,

he would have had to sit on it until he saw Judge Hastings, so that guilt could be reflected on Judge Hastings. 2264.

930. Judge Hastings agrees that it is a logical inference that if the Committee were to conclude that someone other than Judge Hastings were Mayor Clark's source, they would also have to conclude that it was a coincidence that within minutes of seeing Judge Hastings, that Stephen Clark demanded a meeting with Gordon. 2268.

931. Judge Hastings agrees that it is a logical inference that in order for the Committee to conclude that the source was not Judge Hastings, they would also have to conclude that it was a coincidence that Judge Hastings read the same information on September 5th as that which Clark told Gordon the following day. 2269.

932. In response to his anger at having been told by reporters in March, 1986, that there was a grand jury inquiry into his having leaked wiretap information, Judge Hastings complained to Chief Judge King. However, he did not ask Chief Judge King to investigate the matter or to call the FBI, nor did Judge Hastings call the FBI, the U.S. Attorney, or Assistant U.S. Attorney Martinez, with whom he had a good working relationship. 2271-73.

933. Judge Hastings claims that he refused to talk to Mazzella and the Justice Department authorities about the matter because that would have involved breaching restrictions on confidential information. Even if Mazzella did identify himself as a supervisor of the wiretap, Judge Hastings believed he still had the responsibility not to discuss that particular wiretap with him. 2274.

934. Judge Hastings also refused to talk to Eric Holder of the Public Integrity Section the day after he spoke to Mazzella, and he told Holder that he could make his case without him. 2281.

935. The only affirmative step Judge Hastings has taken to get to the bottom of the matter which made him so angry is the fact that he is now appearing in these impeachment proceedings. 2282.

936. Judge Hastings does not believe the leak came from his chambers' staff. 2298.

937. Despite his outrage of being told by reporters in March, 1986, that he was suspected of a wiretap leak, Judge Hastings spoke only to Chief Judge King, his mother, and his attorneys about the matter, and he made no public statement. 2311-14.

TOM DOWD

938. Glen Whittle telephoned him and asked if there was an FBI investigation of Steve Clark and Peter Ferguson. Dowd told him that he would call him back, which he did in the presence of his supervisor. He then reprimanded him for even making such an inquiry. 2321.

939. Here, as in any such inquiry, Dowd would refer the matter to his supervisor, and not check the records to see if there was, in fact, an investigation. It is not the policy of the Miami FBI Office to either confirm or deny the existence of an investigation. 2329-30.

*940. At the time of the inquiry, Dowd did not know there was a wiretap on Gordon, nor had he ever heard of Waxy Gordon. 2324.

941. Dowd was not close to Mayor Clark. He has seen him on only a few occasions. Clark officiated at Dowd's marriage because another agent, Jerry Forrester, one of Clark's golfing partners, suggested he could do it. 2324-6.

942. Whittle is also only an occasional acquaintance. 2329.

*943. There is nothing in his relationship with Clark, Whittle, Rico, or anyone else that would motivate Dowd to give any information to them about an FBI investigation. 2325.

944. It is Dowd's understanding that leaking confidential information is grounds for dismissal from the FBI. 2325.

H. PAUL RICO

*945. Rico did not suggest to Whittle that he call Dowd to inquire if Mayor Clark and Peter Ferguson were under investigation. He never had any conversation with Whittle about this case or any other matter involving FBI business. 2337, 2351.

946. Rico did not know Gordon. 2344.

*947. Rico was never told by any FBI agents anything about any active investigation, nor did Rico make any inquiries of such matters. 2344.

948. Rico never met Judge Hastings prior to his trial. 2346.

949. The Mayor of Dade County has no appointive powers or day-to-day control over Miami Jai Alai or the commission that regulates it. 2349.

*950. Rico never questioned Whittle about this matter, because he believed he should not get involved in investigating matters, especially a matter that appeared to be an official inquiry. 2350-52.

GLEN WHITTLE

951. Whittle has known Mayor Clark for about 30 years, and Peter Ferguson for about 25 years. He has been involved in Clark's political campaigns. 2355-6.

952. He used to play golf in a foursome that consisted of himself, Mayor Clark, and FBI agents Anthony Amoroso and Jerry Forrester. 2356.

953. He also knows Tom Dowd, whom he met on the golf course. 2357.

954. He does not recall calling Tom Dowd to inquire whether Mayor Clark and Peter Ferguson were under investigation. However, based on his reviewing the memorandum Tom Dowd wrote indicating that he did receive such a call from Whittle, he now believes he could have made that call. 2357, 2364.

*955. Whittle does not recall any conversation with Rico about whether Clark and Ferguson were under investigation. 2358.

*956. Whittle believes that by July 24, 1985, he read in the Miami Herald that Clark and Ferguson were being investigated. 2361.

957. If he did make the call, he assumes his motivation would have been to protect the mayor. 2362

*958. Neither Amoroso nor Forrester ever talked to him about Mayor Clark and his possible troubles. 2366.

959. He would not have made any such call to the FBI unless it was based upon reading or being told that the mayor was under investigation. 2369.

960. He has no personal or business contacts with anyone in the federal courthouse in which Judge Hastings sits. 2374.

*961. Whittle does not recall ever having discussed with Mayor Clark whether he was under investigation, or alerted him to this fact. 2378.

962. Judge Hastings name came up in discussions while playing golf with Mayor Clark when the judge was acquitted. Both Whittle and the Mayor were pleased by this result. 2383-4.

963. A search of newspaper articles in the Miami Herald by the House Managers revealed that several stories appeared prior to July 23, 1985, which pertained to possible wrong-doing by Mayor Clark: House Exhibit 231, dated July 18, 1985, suggested that there might be a conflict of interest with respect to Clark's role in zoning matters relating to a new stadium for the Miami Dolphins; House Exhibits 232 and 233, dated June 22, 1985 and July 8, 1985, stated that $5 million in legal fees have been paid by Dade County to law firms that have made political contributions to the mayor and commissioners, and that some of those law firms have represented clients whose interests conflict with the county's. 3716.

ANTHONY AMOROSO

964. Until his retirement earlier this year, Amoroso was an FBI special agent in Miami, in charge of the organized crime squad. 2399.

965. He has known Mayor Clark since 1975. 2399.

966. Sometime in August, 1985, the Special Agent in Charge of the Miami office, Joe Corliss, told him he thought Amoroso should stop playing golf with Mayor Clark because Clark's name had come up in an investigation. He did not say that Clark was under investigation. 2401.

*967. Amoroso and Clark never talked business. 2437.

968. Amoroso never discussed Judge Hastings' acquittal with either Mayor Clark or Glen Whittle. 2459.

969. Amoroso never knew Gordon. 2461.

970. It was the practice in the FBI office to try to keep matters assigned to different squads compartmentalized, so that information was shared only on a need-to-know basis. 2423-4.

Respectfully submitted,

The United States
House of Representatives

By Alan I Baron /pw
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant
Hamilton Fish, Jr.
George W. Gekas

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

August 31, 1989

RESPONDENTS' FILINGS

RESPONDENT'S STATEMENT OF FACTS NOT SUBJECT TO GENUINE DISPUTE

Respondent submits this statement of facts that are not subject to genuine dispute on the record before the Impeachment Trial Committee or, insofar as counsel can determine, in the other materials that have been compiled over the past eight years. In the first part, respondent presents facts concerning the backgrounds and reputations of six individuals who have emerged as significant figures in the accusations made in the first sixteen articles -- the Honorable Alcee L. Hastings, Hemphill Pride, Jr., Jesse McCrary, Jr., William A. Borders, Joseph Nesline, and William Dredge. In the second part, respondent presents, in chronological order to the extent feasible, events that either or both parties have identified as relevant. In the third part, respondent presents facts not subject to genuine dispute concerning the accusations made in Article XVI -- the Mayor Clark accusations.

In order to aid the Impeachment Trial Committee, counsel for respondent has attempted to make part II as inclusive as possible. In respondent's view, however, many of the events reported there are neither relevant nor material to the accusations made against him, a point to be further developed in argument. For that reason, he would ask that the committee specifically note in its report to the Senate that the relevance and materiality of events shown by the evidence remains in dispute, notwithstanding the fact that the occurrence of the events is not subject to genuine dispute.

I. FACTS CONCERNING SIX INDIVIDUALS WHO PLAYED SIGNIFICANT ROLES IN THE EVENTS THAT GAVE RISE TO THE ACCUSATIONS MADE IN ARTICLES I THROUGH XV

A. Alcee Lamar Hastings

1. Alcee Lamar Hastings, the respondent in this case of impeachment, was born in Altamonte Springs, Florida, in 1936. He attended public schools in that area until he graduated from high school. His parents were employed in domestic service in the homes of the wealthy outside Florida. For that reason, his grandmother assumed much of the responsibility for his upbringing until he left home to attend college. (3062-64)

2. Judge Hastings graduated from Fisk University with a degree in biology. He attended the Howard University Law School for two years and then completed his legal education at the law school then maintained by the State of Florida at Florida A & M University. He graduated and was admitted to the Florida Bar in 1963. At that time, many of the kinds of entry-level positions through which many young lawyers began their careers were not open to him. Accordingly, he went directly into private practice, initially with a high school classmate and later on his own. (3063-65)

3. Judge Hastings maintained a general practice until his appointment to the state court bench in 1977. He represented criminal defendants, including a significant number charged with capital crimes. He also handled civil

litigation and commercial and real estate matters. As he characterized it, he had a "Y'all come" practice. Judge Hastings's income from practice was adequate to his needs, but was not lucrative by the standards of many in the legal profession and, indeed, was less than the judicial salaries he has received since his appointment to the bench. (3065-67, 3069-70)

4. From the outset of his career, Judge Hastings was also active in civil rights matters. He brought the suit through which the Broward County public school system was desegregated; he brought or participated in most of the public accommodation suits filed in the area; and he represented two local chapters of NAACP, without fee. (3065-66)

5. Judge Hastings was also active in the affairs of his church, his community, and other organizations. His commitments were such that he was attending one or more meetings almost on a nightly basis. (3068-69)

6. Shortly after he entered practice, he began his own quest to open Florida's political processes to blacks by seeking office himself. Early in his career he ran for the Ft. Lauderdale City Commission (twice) and for each house of the Florida legislature. In 1970, he ran in the Democratic primary against former Senator Lawton Chiles for nomination as a candidate for the United States Senate. Thereafter he sought a seat in the Florida Public Utilities Commission. He did not win any of these contests. (3067-68)

7. Judge Hastings became active in Democratic Party politics even before he graduated from law school. He was an active participant in the Democratic Party in every presidential campaign from the 1960 election onward. His role in President Johnson's campaign was such that he was among those invited to meet with the President at the White House. He was one of the original five politicians in Florida who chose to support Jimmy Carter in his quest for the presidency and, through that experience, came to know him personally. (3074-75)

8. Judge Hastings's status in the profession was formally recognized in 1977. From among 79 applicants to fill a vacancy on the Circuit Court in Broward County, Judge Hastings was one of the three candidates submitted to then-Governor Rueben Askew by the judicial nominating panel for that part of Florida. Then-Governor Askew appointed him to that office where he served until his elevation to the federal bench in 1979. (3070-72)

9. By 1979, Florida's then-Senators Lawton Chiles and Richard Stone had concurred in the establishment of a judicial nominating committee to screen candidates for the federal bench in Florida. There were some 250 applicants for the five district court judgeships created in Florida by the Ominibus [title] Act of 197__. Judge Hastings was one of the five persons recommended for appointment. He was nominated by then-President Carter, and, with the advice and consent of the Senate, he was appointed to serve as a United

States District Judge for the Southern District of Florida. He was invested in October 1979 and assumed the duties of his office the following month. (3072-73, 3075-78)

10. Judge Hastings carried a full and normal caseload on his court until the events that gave rise to his indictment were publicly reported in late 1981. When the indictment was filed on December 29, 1981, Judge Hastings promptly requested reassignment of all cases before him pending disposition of the charges against him. Following his acquittal in February 1983, he promptly resumed the normal duties of a federal judge for the Southern District of Florida. He fully executed those duties from February 1983 until some time after the articles of impeachment that gave rise to this case were exhibited in the Senate. For some time thereafter, he maintained a civil caseload and continued to perform administrative duties for the court.

11. The opinions of judges, lawyers, and others in the Southern District of Florida concerning Judge Hastings's competence and integrity were sought at the time of his initial nomination in 1979 and were presented at his 1983 trial and in the hearings before the Impeachment Trial Committee. Prior to his appointment he was uniformly regarded as a man of the highest integrity who placed service to his community and to causes he deemed important above the quest for financial wealth. By all accounts he was and has remained a man whose judicial salary was sufficient to satisfy his modest needs.

12. The judge's reputation and opinions concerning his competence and integrity among judges, lawyers, and others in his community remain unchanged in 1989, notwithstanding the charges against him and the attendant publicity. Senior trial practitioners consistently testified that he was an outstanding trial judge on the federal bench and that his reputation among experienced practitioners who appeared before him was consistent with their opinions. Former prosecutors, including the one who had been chief of the criminal division in the office of United States Attorney for the Southern District of Florida in 1981, testified that their confidence in his integrity, and that of other attorneys who appeared before him, remained unimpaired by the events that had transpired. The Chief Judge of the Southern District of Florida attested to the fact that Judge Hastings had been a fully productive member of the court since his acquittal and that his continuing service had contributed to the work of that court without causing any problems among his colleagues or in the operations of the court.

B. Hemphill Pride

C. Jesse McCrary

D. William A. Borders

E. Joseph Nesline

F. William Dredge

II. A CHRONOLOGY OF EVENTS CLAIMED TO BE RELEVANT BY ONE OR BOTH PARTIES

[This section will include events from December 1980 through February 1983 whose occurrence is not in dispute where either party has claimed that the event was relevant.]

III. FACTS NOT SUBJECT TO GENUINE DISPUTE CONCERNING THE ACCUSATION MADE IN ARTICLE XVI

RECEIVED SEP 7 1989

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

RESPONDENT'S POST-TRIAL STATEMENT OF THE CASE

Appendix A to this post-trial statement is a detailed and fairly comprehensive statement of the evidence to aid the Impeachment Trial Committee and the Senate in organizing and assessing the evidence in this case. There is, however, a danger in a statement such as that, a danger that may unfairly prejudice the respondent in this case. A comprehensive statement may suggest that this is a complex case in which the record is complete and from which the truth can be divined through a careful study of the mass of detail shown by the evidence it contains. That is wrong. The case is not complex; the evidence is not complete; and truth is now beyond reach.

The House assumed the burden of proving its accusations. It has failed. The mass of data it has presented can, however, be marshalled to leave suspicion and doubt. But it is respondent who is entitled to the benefit of any doubt that remains. The procedures established for this case require that the committee and the Senate take special care if those principles are to be observed here.

The evidence in this case was, for the most part, presented through witnesses who could be examined and cross-examined. The credibility of the accounts they provided could be explored; the events shown by the testimony or records could be set in the context in which they occurred. The committee must now prepare a report of disputed and undisputed facts. This creates the danger that events will be isolated from their contexts and presented in a manner that may unfairly invite the marshalling of data without regard for the credibility of the source or the context established by the explanation through which it was presented.

There is a further danger in the process that should be recognized. The evidence is incomplete through no fault of respondent. Witnesses whose testimony would have aided respondent have died or become incompetent. Records that would have enabled respondent to complete the records from which patterns are being discerned and tested have been destroyed. There is thus the further danger that a report of facts shown or suggested by the evidence that was available will create a false sense of completeness and invite its readers to ignore plausible facts that might have been shown at an earlier stage.

Respondent is concerned that the Senate will be presented with a mass of detail that will cloud the true issues and may persuade some to substitute suspicion and doubt concerning respondent's innocence for the proof of his guilt that should be required. Respondent has submitted this statement to set the evidence in a context that illustrates his concerns and that may aid the committee and the Senate in understanding the case.

A. Who Is This Accused and Why Is He Here?

Judge Hastings has twice explained the events of 1981. He has explained his relationship with Borders and Pride and, to the extent he can recall them, the substance of their conversations and contacts that year. He has twice explained his decisions in the *Romano* case and their timing. His explanations have been consistent with and fairly account for the events that occurred or that are suggested by the data that remain. In significant measure these explanations are corroborated by direct testimony provided by other credible witnesses.[1]

The Judge Hastings who has provided these explanations is and remains a man of the highest integrity, a man of scrupulous honesty, a man for whom financial reward has never been a primary or significant objective, and a man who has proved himself to be an able and, in the view of many, an outstanding trial judge. The background of the man and his contributions to his community evidence those characteristics in full measure. Moreover and more important, that is the reputation he has earned and those are the firm opinion of those who know the man and have observed him and his work:

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[1] There is, indeed, conflicting testimony on only two points that are material to the accusations the House has made -- whether he was surprised by Borders's arrival at the Sheraton on September 10 and whether Pride accompanied him to his room on October 9 and thus was in a position to observe whether the judge made two telephone calls. On each of these points the judge's explanation is corroborated by witnesses of unimpeachable or unimpeached credibility -- Jesse McCrary, Pearl and Margaret Dabreau, and Shirley Pride.

> The Honorable James Lawrence King, chief judge of the court on which the judge has served [2148-50, RX56];
>
> The Honorable Henry Latimer, the former judge who served with Judge Hastings on the state court bench and who has known the man and his reputation over the years [2630-36, 2641, 2644];
>
> The Honorable Edward Rogers, the state court judge who has known the man for years and is thoroughly familiar with his reputation [2662-67];
>
> Neal Sonnett, the president-elect of the National Association of Criminal Defense lawyers, a senior member of the bar in Miami, the lawyer who represented the Romano brothers, a former chief of the criminal division in the United States Attorney's Office in the judge's district, and a lawyer who has practiced in the judge's courtroom [442-47, 459-60, 477-88, 496, RX7];
>
> Martin R. Raskin, the chief of that criminal division at time the accusations were made and a lawyer who prosecuted a major and sensitive case before the judge and who is now an active member of the trial bar [3003-12, RX155];
>
> Jesse McCrary, a distinguished lawyer and former public servant who has known the judge since law school [2559-61, RX132];
>
> Jeffrey Miller, the law clerk and young lawyer who observed the man in the critical year and who has gone on to become a successful practitioner [1064-70]; and
>
> David Thomas, the young man who attested, in a halting voice, who Judge Hastings was and what he meant to those who were young and black in South Florida [799-800, 802-03].

These are the judges, lawyers, and citizens who were called to testify in 1989. These are judges and lawyers whose opinions remain unchanged eight years after the events and six years after the verdict. These are the witnesses who attested to a reputation so secure that it has remained unshaken among those who know the man best and must trust him most. Judge Hastings is a man who has been investigated and accused by those who know him not.

This is the judge and the man whom the House has called to account for his conduct a second time. This is the judge who has been called because the House claimed that it had circumstantial evidence that would overwhelmingly show that he was in fact a participant in Borders's 1981 corrupt scheme and that the explanations he gave at his 1983 trial were false. The House has had full opportunity to make good its claim, and it is fair now to ask, "Has it discharged the burden it assumed?"

B. Article I: A Conspiracy of Dunces

1. *"From Sometime in the First Half of 1981 . . ."* This time the House alleged that the conspiracy was formed "sometime in the first half of 1981." In support of this theory, they have produced telephone records showing twelve telephone calls -- one three-minute call, five message slips, and six calls lasting a minute or less -- calls that occurred over a fourteen week period from February 20 through May 29, 1981. Over the same period, the evidence shows that there was activity in the *Romano* case on seventeen different dates. Most of the telephone contacts indicated preceded or followed an event that occurred in the *Ro-*

mano case. Given the number of events that occurred in the case, it probably could not have been otherwise.[2]

Even at this late date, the judge has identified events that also coincided with the indicated contacts -- the NBA/Judicial Council meeting in Miami in late February; Pride's release from prison in March; an April proposal for the NBA/Judicial Council annual meeting in July; President Reagan's decision to remove Borders from office and the South Carolina Supreme Court's decision not to permanently disbar Pride in May. He has testified that these events were the principal topics of discussion in his conversations with Borders during this period, and that they never discussed the *Romano* case. The House asks the Senate to discern a pattern in the partial data the managers have presented that overwhelms the obvious pattern established by the innocent events and the explanations provided by a judge who has earned over a lifetime a reputation as a man of integrity and honesty of the highest order.[3]

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[2] These events and those that subsequently occurred through October 9, 1981, are reported in more detailed fashion in the appended Comprehensive Statement. These facts are documented with references to the record in that statement. The present statement does not include the kind of cross-referencing and additional documentation that would have aided the committee and the Senate. The facts that account for that failure should, in fairness, also be noted.

Respondent asked for resources and time to prepare and conduct his defense at the outset. He gave the committee financial and other information to document his needs. He noted the disparity in time and resources that had been available to those who had sought to prepare the case against him over the years and that would be available to the managers responsible for presenting it here. The committee denied all funds and granted only limited time. Respondent renewed his request for time before the hearings began and documented his need. This too was denied.

The effects of the resulting handicaps were apparent throughout the evidentiary hearings. Those handicaps continue to burden respondent and his counsel here. The constraints of time and resources have again precluded counsel from providing respondent with the kind of assistance he should have had. The nature and consequences these handicaps impose upon the accused, and his counsel, should be noted here and in the future.

This is improper. The indicated contacts between the judge and Borders are consistent with the known events and the judge's innocent explanations of them. The House's evidence may, in the eyes of some, suffice to suggest grounds for suspicion and doubt. But the House assumed the burden of proving its claims; in this, its managers have failed.

The data presented invites speculation and hypothesizing. The managers have not presented evidence that proves anything, let alone that proves that there was a conspiracy "from some time in the first half of 1981" by any standard, civil or criminal. The only function served by either the allegation or the data was to confuse the issues and camouflage the fact that the accusations and the evidence have not changed since 1983.[4]

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[3] The House also offered the testimony of William Dredge, the career criminal who claimed in 1981 that he had known Borders for years, when that version served his interests; who recalled in 1985 that he had first met Borders in early May, when his interests were unclear; but who recalled in detail in 1989 that the first meeting occurred in March, after he had eighteen hours to study the reconstructed data and master the revised theory now being advanced. Dredge is a significant witness, but not for the House's case.

[4] In any other tribunal, civil or criminal, Article I would have been dismissed for lack of sufficient evidence to support an essential allegation. The traditional rules of pleading, practice, and evidence have evolved to prevent such variances between the pleading and proof and avoid evidence that invited the tribunal to substitute speculation for proof. The Senate's rules do not cover matters such as these. The House has taken advantage of the deficiency by simply ignoring established principles of pleading and proof

The remainder of the House's case is a re-run of the 1983 trial supplemented by the testimony of Donna Myrill and Roger Shuy. It concerns the events that occurred in the last half of 1981. In point of fact, the only new evidence supports the judge's claims and raises further questions about the conduct of his accusers.

2. *The Further Account of an Honest Man.* The events that brought the two men together or justified communication in July and thereafter and the judge's explanations are consistent and thoroughly plausible. Borders visited with two friends and associates, the judge and Jesse McCrary, when he was in Miami on July 11. The judge had lunch with Borders and another lawyer, and Borders agreed to join the judge and others for dinner while the judge was in Washington for an ABA standing committee meeting from July 17 to July 20. Borders did not appear for the dinner and offered no explanation for the failure. Both men attended the annual meeting of the National Bar Association in Detroit at the end of July. During that meeting, Borders accelerated and thereafter persisted in insisting that the judge should send solicitation letters on behalf of "Hemp" -- Hemphill Pride, the long-time friend in desperate need -- notwithstanding any ethical reservations the judge might have.

The judge and Jesse McCrary planned to spend a social weekend in Washington on September 12 and 13 when they discovered that their respective travel plans made this conve-

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that its managers found inconvenient.

nient. Late Saturday evening, Borders unexpectedly arrived and joined the party. During the weekend, Borders told the judge he would be in Miami the following Wednesday, September 16, and invited the judge to join him at the Fontainebleau Hotel that evening. The judge agreed. The judge went; Borders again failed to appear.

On October 5, during the course of presiding over a jury trial, the judge briefly succumbed to Borders's persistent requests and drafted two proposed letters for Hemp and a covering letter to Hemp asking him to review and comment upon the proposed drafts. At the end of the day, the judge called Borders, told him he had drafted the "letters for Hemp" and asked whether Borders had talked with Hemp to verify his needs since last they had spoken about the matter. Borders led the judge to believe matters were well in hand -- that Pride had written some things down for him and that Borders was to go back for more information. Thus reassured, the judge responded that he saw "no great big problem" and that he would send the proposed drafts to Pride in Columbia, South Carolina, the following morning so that Pride might review them.

Over the evening, the judge reflected further and again concluded such solicitation letters would be improper, given his position as a federal judge. He decided to explain his decision to both Pride and Borders the following weekend when the three were together in Washington for the long-planned dinner-cruise to honor Borders for his work as president of the NBA.

The events in the *Romano* case and the judge's explanations of them are equally consistent and, in large measure, are corroborated by the testimony of others. The *Romano* case was one of the many cases for which the judge was responsible in 1981. In December 1980, a jury had found the Romanos guilty of violating the RICO statute. The government had claimed that an interest in a motel and monies they had allegedly derived from their illegal activities were subject to forfeiture under that statute. The forfeiture issues had been tried before the judge and briefs had been submitted. On May 4, 1981, the judge had adopted the government's position and adjudged forfeit an interest in the Sea Inn Motel valued at $316,000 and cash in the amount of $846,000.

On June 19, 1981, while post-trial motions and a motion to reconsider the forfeiture were pending, the court of appeals had issued a decision, *United States v. Martino*, ruling that cash proceeds were not subject to forfeiture under the RICO statute. The Romano's brief addressing *Martino* and its application was filed on Monday, July 6. Both the *Martino* decision and the subsequent briefs were routinely routed to Jeffrey Miller, the judge's law clerk responsible for the *Romano* file.

The *Romano* case was one of several scheduled for hearings on Wednesday, July 8. The judge had set the matter for argument on all post-trial motions and sentencing. Between cases, and shortly before the *Romano* case was called, Miller briefed the judge and gave him handwritten memoranda on the pending motions. The judge was a quick study, but had had no opportunity to read the *Martino* decision. Based on Miller's briefing, he questioned counsel during argument, stating that he had read *Martino*. During the hearing, he denied the Romano's motion for a new trial; announced that he would deny the motion to reconsider the forfeiture, but would issue a brief order explaining that decision in light of the new cases that had been decided; and entered judgments of conviction and sentenced the Romanos to three-year prison terms. After the hearing, the Romano's lawyer told his clients that he did not think the judge had in fact read *Martino* and that he thought that, when the judge did, he would probably reverse his position.

After the hearing, the judge told Miller to draft an order on the forfeiture. Miller understood that the judge wanted to stand by his initial forfeiture decision, but only if the law of the circuit permitted. Miller could not find a way to justify that result. Instead, he prepared an extensive draft order that would have required the parties to brief the issue further. He did not finalize or show this draft to the judge. He set the file aside at the end of July, and work that he was required to do on other cases in August prevented him from returning to it.

On August 27, the court of appeals issued a further decision, *United States v. Peacock*. The court reversed a district judge who had failed to follow *Martino*, noting that it was and would remain the law of the circuit unless and until it was reconsidered or reversed. Early in September, Miller discussed the *Peacock* decision with the judge and advised him that the law of the circuit required that he vacate the money portion of the *Romano* forfeiture. The judge agreed and instructed Miller to prepare an order that did this, but that also made clear the judge's disagreement with the decisions he was applying. By all accounts, this discussion and the judge's instruction took place before September 10.

Miller continued to work on other matters. The judge did not press him, and he had not completed the *Romano* order by early October. At that point, the delay did become a matter of some concern to the judge. Miller had been scheduled to complete his clerkship with Judge Hastings in September and to begin a second one-year clerkship with another judge on that court, the Honorable James C. Paine. Judge Hastings had had difficulty in the past when a clerk had left before completing her assignments. At the judge's request, Judge Paine had agreed that Miller could remain in Judge Hastings's chambers beyond the end of September, if that was necessary to enable him to complete his work. In addition to this problem, Judge Hastings was scheduled to leave Miami on October 7 and had an itinerary that was to keep him out of his chambers for most of the rest of the month.

On Monday, October 5, Judge Hastings asked Miller about the *Romano* order. When he was told it was not complete, the judge told Miller he wanted it out that day. Miller devoted his full attention to the task. The July draft was revised and converted into an order that complied with the judge's instructions. That order was completed, signed, and mailed late the following day, October 6. In order to complete an on-going jury trial, the judge held court until 9:30 p.m. that evening. When that trial ended the following day, the judge left for Albany, Georgia, where he was scheduled to speak on Thursday, October 8.

On Friday, October 9, the judge flew to Washington for the dinner-cruise. During the afternoon he received a call from Pride. Pride told him that the FBI had arrested William Borders, and that the allegations had something to do with bribery in the judge's courtroom. The judge was stunned. Pride advised him to return to Florida so he could defend himself on his home turf. The judge lived in Ft. Lauderdale, Florida, with his mother, who was crippled by arthritis. He knew that any accusations involving his name would generate immediate and intensive media interest. He decided home was where he belonged. He returned to his room, packed his bag, took a taxi to BWI, and flew to Ft. Lauderdale. After checking on his mother, he went to the home of a friend and lawyer, Patricia Williams. There he met with FBI agents and responded freely to all their questions for more than two hours.

The judge's account of the events that took place prior to the afternoon of October 9 is thoroughly plausible and wholly consistent with the available evidence. The events that occurred on the afternoon and evening of October 9 were themselves abnormal. The immediate past-president of the NBA, a prominent advisor on minority affairs to the Carter administration and an active participant in the Democratic National Committee, a lawyer who had successfully sued President Reagan over a job and won, and a long-time friend of the judge had been arrested by the FBI. The judge, a prominent figure in the civil rights movement and in the Democratic Party in Florida and a liberal, black, activist federal judge responsible for two cases of national importance, was told the FBI's accusations had something to do with bribery in his courtroom. Viewed in context and from the perspective of someone with the judge's experience and background, the judge's response to the disclosure and his explanation of his actions were more than reasonable.

This is the plausible and substantially corroborated account of the events given by a man who had earned a reputation for integrity and honesty that was unquestioned and, in the view of many, unquestionable. The account has been twice challenged because three parties -- William Dredge, William Borders, and the two FBI agents and the prosecutor representing the government -- had a common objective. Each wanted to create a scenario that would satisfy the others that Borders in fact had the authority to solicit bribes on the judge's behalf -- Dredge, so that he could maximize the benefits of his plea bargain; Borders, so that he could realize an unearned $150,000; and the FBI agents and lawyer so that they could make a case against a federal judge. That is the only conclusion that can fairly be drawn from the evidence concerning "Operation Apple Eye" and its implementation.

3. *"Operation Apple Eye" and the Questions it Raised.* On July 20, 1981, William Dredge went to the office of the United States Attorney in Miami. Dredge was a career criminal operating as a fence, a burglar, and a drug dealer. A federal grand jury in Baltimore had indicted him on drug conspiracy and distribution charges, and he was scheduled to be tried in September. He wanted to make a deal.

Over the next few days, Dredge told government attorneys that Borders was soliciting bribes to fix cases before Judge Hastings and another federal judge in New Orleans. The FBI had information that Borders had made similar claims concerning judges in Washington, and they were able to observe Borders talking with one of the persons from whom Dredge said Borders was seeking a bribe, Santo Trafficante, a defendant in a case before Judge Hastings.

The FBI had no information to suggest that Judge Hastings, or any of the other judges about whom Borders was reported to have made claims, was a likely candidate for such a scheme. Even Dredge later acknowledged that he had heard other lawyers make claims about other judges over the years and that he always concluded that such claims had been false. That was not his story then. When it was a deal he sought, Dredge claimed that he had known Borders for years and implied that he had overheard conversations in which Borders and the judge had discussed bribery schemes -- both assertions that Dredge has since acknowledged were false.

According to Dredge, the *Romano* case was one of the cases in which Borders had been seeking a bribe. Dredge reported that Borders was seeking $150,000 from the Romanos for assurances that they would not go to prison and had offered to have the judge appear at a particular restaurant on a specified date to demonstrate that the judge was part of Borders's scheme. Dredge claimed that he could introduce an undercover agent posing as one of the Romanos to Borders to enable the government to gather evidence of the scheme and that he would do so for a deal in his drug case.

The FBI assigned Special Agents Anthony Amoroso and William Murphy responsibility for the investigation. The Justice Department assigned Reid Weingarten, an attorney in the Public Integrity Section of its Criminal Division, to advise in the investigation and handle any prosecutions that resulted. Agents Amoroso and Murphy promptly designed an undercover operation to develop evidence against the judge, as well as Borders, a proposal Weingarten fully endorsed. The Assistant United States Attorney in Baltimore was persuaded to accept a deal that satisfied Dredge, and Operation Apple Eye was implemented.

On September 10, 1981, Dredge called Borders and told him the Romanos were ready to deal. On Saturday, September 12, Dredge introduced a retired FBI agent, H. Paul Rico, posing as Frank Romano, to Borders. Borders confirmed the price Dredge had quoted, $150,000, for the judge's eliminating the prison terms, and agreed to two shows of proof -- the judge would appear at the Fontainebleau Hotel for dinner at 8:00 p.m. the following Wednesday, September 16, and would issue an order within ten days returning a substantial amount of the property he had adjudicated forfeit. Rico/Romano agreed in turn to meet with Borders the following Saturday and give him an unspecified down payment.

The first two stages of the operation went as planned. The judge was observed having dinner with a friend at the Fontainebleau on September 16, and Rico/Romano met with Borders on September 19 and gave him $25,000. At that point, Borders assured Rico/Romano that the forfeiture order would issue within ten days of that date, by September 29, and insisted that the balance be paid promptly thereafter. On that basis, the two men agreed to meet a third time at Miami International Airport on Saturday, October 3, for the final payoff.

The FBI planned the remainder of the operation accordingly. Authorization to tap Borders's telephones was to be sought immediately after the judge issued the order. Rico/Romano would then call Borders with questions about the order to provoke discussions between Borders and the judge that could be intercepted and recorded. Borders would then be arrested at the scene, confronted with the evidence against him, and offered an opportunity to cooperate against the judge.

At that point the operation fell apart. Judge Hastings did not issue the order by September 29. Authorization to intercept Borders's calls at his home and office was obtained, and Rico/Romano called Borders to find out what was happening on Friday, October 2, and again on Sunday, October 4. No calls between Borders and the judge were intercepted over the weekend. On Monday, October 5 at 4:22 p.m., Rico/Romano called Borders to inquire again. In that conversation, Borders assured him that the matter had "been taken care of" and that "your [Rico/Romano's] friend should tell you something." The first evidence of any communication between Borders and the judge did not come until fifty minutes later, when the FBI intercepted the judge's call concerning "letters for Hemp" at 5:12 p.m. that evening.

The FBI decided to proceed with its scenario, notwithstanding its failure to gather further evidence that might have exonerated the judge or shown his guilt. Rico/Romano called Borders. He agreed to fly to Washington for the final payoff and to call Borders when he arrived. The FBI prepared a room at the Twin Bridges Marriott so that the payoff and arrest could be videotaped and recorded. Over the vigorous objection of the United States Attorney for the Southern District of Florida and the chief of his criminal division, the Justice Department approved the FBI's decision to arrest Borders at the scene of the payoff rather than letting him take the money to see if any would go to the judge. No one can ever justify that decision. Given the judge's position and the stakes, it was irresponsible at best. It unfairly assured that Judge Hastings would be left with a burden of suspicion and doubt that no man could ever dispel.

The payoff was scheduled for October 9, the day of the Borders dinner-cruise. Rico/Romano came to Washington and called Borders. Borders went to the hotel. He was arrested at the scene. He was advised of his rights and signed a waiver. He was confronted with evidence and efforts were made to obtain his cooperation for almost an hour. The FBI elected not to videotape or record this session, and the recollections of the agents who were there and testified about what transpired can best be described as skimpy. All that is known is that Borders ultimately decided not to cooperate.

Any mature and proper exercise of executive discretion would have dictated that the case against the judge be terminated at that point. Given his office, senior officials at the Justice Department and the FBI should have taken command and prohibited the release of any information to the public. Upon review, they should have assumed responsibility for the failure of the investigative plan and directed that Borders alone be prosecuted. They might properly have asked Judge Hastings to assist, but there should have been no attempt to manufacture a case against a federal judge on the basis of an operation that had been terminated in a manner that prevented the government from conclusively establishing the judge's innocence or guilt. Any suspicions and ambitions of the field agents and trial attorney involved should have been overridden.

The events that followed Borders's arrest precluded such review. There was an immediate massive and improper leak. The name, and eventually the picture of Dredge, the confidential informant, appeared in the newspapers. Details of the investigation and the allegations against Judge Hastings were widely disseminated. These events gave legitimate ground for the concerns that Judge Hastings and his supporters expressed; as a practical matter that disclosure reflected or forced an immediate decision to vigorously pursue the judge without regard for the consequences.

Some account of the events that occurred over the succeeding eighteen months is necessary. The House has construed these events as providing support for its accusations. In respondent's view, the events raise further questions about the conduct of the government. In any event the data that was gathered and available at trial, the data that was gathered but withheld, and the data that was not gathered then or at all bear upon issues the Senate must consider in this case.

4. *Arrest to Trial: Further Circumstances that Bear Upon the Case*. The case against Borders was solid from the

outset. The case against Judge Hastings was, remained, and remains circumstantial. The question was and remains whether Borders was acting on his own or there was a conspiracy involving the judge. That was and remained the focus of the post-arrest investigations.

The basic data was simply gathered. On October 9, 1981, with a grand jury subpoena in hand and while the judge and his secretary were absent, FBI agents helped themselves to calendars, diaries, and other records from Judge Hastings's office and elsewhere in his chambers. Those records and the information that the judge freely supplied that evening made it a simple matter for the prosecutor and the FBI to gather and reconstruct the record of telephone calls and travels showing actual or potential contacts between the judge and Borders. From Pride, they learned that he had apparently been unaware of any proposals by Borders to solicit help for him and that, had he known, he would not have approved them. They also learned that Pride's recollection of the events of the afternoon of October 9 differed from the judge's in significant detail.[5]

The indictment was filed on December 29, 1981. Discovery orders were entered, pre-trial motions were filed, and a first exchange of discovery was made. One of Judge Hastings's motions asked the court to rule that the Constitution required that impeachment by the House and trial and conviction by the Senate precede any exercise of discretion by the executive or jurisdiction by the courts to prosecute a sitting federal judge and to dismiss the indictment on that ground. The then-Chief Justice had designated the Honorable Edward Thaxter Gignoux of the District of Maine to preside. On February 17, 1981, Judge Gignoux denied the motion to dismiss, but announced that he would stay the proceedings if Judge Hastings appealed that order. The appeal was filed; the case against Borders was severed; and proceedings in the case against Judge Hastings were stayed pending disposition of the appeal.

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[5] So anxious was Pride to curry favor that he agreed to secretly record a telephone conversation with the judge. From that they only learned that the judge was outraged by the manner in which the government was conducting the investigation and that the judge was still more concerned about his friend's problems than his own. [HX128; RX166]

Borders was tried in March 1982. Judge Hastings had offered the letters to John Shorter, Borders's lawyer, and was available to testify at that trial. Shorter declined the offer. The judge was not called. Borders limited his defense to a parade of character witnesses, mostly former officials in the Carter campaign or administration. The evidence of Borders's corrupt involvement was undisputable, and the circumstantial evidence indicating the judge's participation went to the jury unrebutted and unexplained. The jury had little choice but to find him guilty, and it did.

After the court of appeals rejected Judge Hastings's appeal, Judge Gignoux scheduled a status conference for November 4, 1982. He scheduled the trial for January 10, 1983, and thereafter directed that pre-trial discovery be completed by December 1, 1982. The materials produced on that date included the draft letters "for Hemp." The government had those drafts tested and learned that both the paper and the ink had been in use prior to October 1981.

The prosecutors withheld or resisted producing at trial information that bore directly on the judge's defense. The judge had sought in vain to locate Dredge and had asked the court to direct the government to produce him for interview, for deposition, and as a material witness at trial. The prosecutors resisted these attempts saying that his materiality was not established. The judge also sought, however, to introduce evidence showing that too frequently unscrupulous lawyers or others, "rainmakers" as he styled them, made unfounded claims that they had the power to fix cases before a judge in exchange for a bribe. The prosecutors objected, and Judge Gignoux ruled that such evidence would not be admitted unless Judge Hastings could produce evidence that Borders had held himself out as having the power to fix cases before judges other than Judge Hastings. The prosecutors never disclosed that Dredge was the witness Judge Hastings needed.[6]

The trial took more than two weeks. The prosecutors had elected to proceed on the theory that the conspiracy began on or about September 10 and ended with Borders's arrest on October 9. They selected and presented their evidence accordingly. The judge presented his witnesses and evidence. He took the stand and testified fully. He was examined and cross-examined over a two-day period. The government produced witnesses and documents in rebuttal to undermine the judge's credibility.

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[6] The prosecutors also submitted the transcript of the conversation between Pride and the judge which Pride had covertly recorded. Pride was one of the government's main witnesses, but the prosecutors suggested that the judge was not entitled to have the recorded conversation to prepare for cross-examination. Judge Gignoux apparently agreed. Judge Hastings did not even learn the conversation had been recorded until shortly before the hearings before the Impeachment Trial Committee.

Reid Weingarten marshalled the evidence for the government in closing. Event-by-event, inference-by-inference, he argued that the circumstances, individually or collectively, overwhelmingly established the judge's guilty participation. Patricia Williams marshalled the evidence for the accused. Inconsistency-by-inconsistency, explanation-by-explanation, she argued that this was a man of honesty and integrity who had been manipulated and deceived by a friend and prosecuted by a government that valued its cash more than truth. In rebuttal, Weingarten argued that the judge's testimony on every material point was false and that the letters were fabricated. He argued that this alone was conclusive evidence of guilt: "Why," he cried, "would a federal judge lie, unless he was guilty?"

The jury, the only body that has previously heard the evidence and arguments on both sides, deliberated and returned its verdict -- not guilty, so say we all. One of the jurors later summed up the case in a sentence that is as true today as it was then. The government had "a circumstantial case that was shaky at best . . . and an investigation that didn't finish."[7] Six years later, the case against the accused remains the same in every material respect. It is the case for the accused that has been strengthened.

There has always been one troubling question that the judge's explanations could not fully address because he did not know the answer: "How did Borders learn about the Romanos and obtain information about their case?" At the trial, the judge could only point to the ease with which information could be obtained from the courthouse and his chambers. He could not respond further. In the course of the subsequent investigations, the government disclosed the information from which the answer might have been discovered. The necessary inquiries were not pursued and now it is too late. It is still possible, however, to reconstruct the plausible theory that corroborates the judge's innocence.

5. *Borders learned about the Romanos and their case through Nesline and Dredge*. By all accounts, Joseph Nesline was a major underworld figure in Washington, D.C., with connections to organized crime in Florida and elsewhere. By all accounts, Nesline knew Borders and became involved in his corrupt schemes. Apparently, Nesline believed Borders's claims that he could fix cases before Judge Hastings and other judges. According to Dredge, Nesline introduced Traf-

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[7] S. Hrg. 101-3 at 40 (Jan. 26, 1989) (transcript of remarks by Deborah McMullen from video tape played for Senate Committee on Rules and Administration).

ficante and Dredge to Borders.

By all accounts, Nesline would have had sources through which he could have gained easy access to information about the Romanos and their case -- either directly or indirectly. Dredge, in all probability, was brought into the relationship to act as a messenger and a bagman. Nesline had not seen him in years, and Borders had never met him before 1981.

In all likelihood, Nesline learned that the Romanos had a case before Judge Hastings and informed Borders and established lines of communication through which he could be kept informed of developments in their case. On any fair assessment of the evidence, Dredge did not meet Borders until late April or early May, as he testified before the judicial investigating committee. On that basis, if the statement was made at all, the only date on which Borders could have told Dredge that the judge was going to grant a *sua sponte* continuance was on July 7, 1981. The judge did not grant a continuance; he sent them to jail. That event alone would have confirmed what Dredge apparently believed from the outset -- that Borders did not even have the power to fix a continuance in Judge Hastings's courtroom.

By his own account, Dredge remained in contact with Borders to maintain Borders's belief that the Romanos still were interested in a deal. In this view, either he or Borders would have continued to use the channels of communication established by Nesline to keep themselves informed about developments in the case. Direct or indirect inquiries would surely have revealed Sonnett's opinion that the judge was likely to vacate a substantial part of the forfeiture after he read the new court of appeals decision.

After July 20, Dredge, had an additional source -- the FBI. The evidence here is troubling. The FBI contacted James Deichert, the prosecutor in *Romano*, told him about the case, and asked him to report on any information he obtained from Jeffrey Miller, the judge's clerk. Deichert called Miller and learned that Miller was preparing an order that might merit publication. Deichert would have also known that Miller was scheduled to finish his clerkship by the end of September. Deichert would have reported these developments to Agent Murphy, and it is entirely possible that Dredge was briefed or that this information was discussed in his presence.

By his own account, Dredge was an excellent "con artist," well able to tell his customers what they wanted to hear in order to make a deal, and no one who has studied the record or seen the man can doubt that he is a practiced liar. It is thus plausible and perhaps probable that Dredge used the information available to construct and broker a deal that would satisfy both sides -- Borders and the FBI. The evidence of on-going contacts through October 7 suggest that he kept each side supplied with the information necessary to assure the deal went smoothly.

That summative account is fully consistent with the data that remains. It is in some measure confirmed by the fact that Nesline later reported on two occasions -- once to Kenneth Robinson and once to Kendall Shull -- that the judge was innocent and that Borders was simply running a scam on his friend. It can now never be further confirmed because Nesline has become incompetent and the Romanos are dead. That, however, is the fault of those who declined to pursue the investigation when that was possible. Given those failures, fairness to Judge Hastings requires, at a minimum, that any plausible account consistent with his innocence be assigned a presumption of correctness. The evidence makes it clear that there are plausible hypotheses consistent with the judge's innocence that the House's evidence fails to rebut.

The evidence presented by the House is not enough. Standing alone, as it did at Borders's trial and in the proceedings in the judiciary and the House, the evidence can be marshalled to establish a circumstantial case. The evidence here does not stand alone. As he did in 1983, the judge has confronted the evidence. The testimony and other evidence provided by respondent provides an account that is thoroughly plausible and wholly consistent with his claim of innocence. What is left is, at most, mere suspicion and doubt. That is not enough.

C. Articles II - XV
Questions About the Testimony of an Innocent Man

In large measure, Articles II - XV are superfluous. If the judge was not a participant in Borders's corrupt scheme, then his denials and explanation should be accepted as a presumptively honest account. If he is guilty, his testimony was false. The decision on Article I should be dispositive.

Nonetheless, the fact that the judge was confronted throughout the hearings with questions that marshalled the circumstantial evidence to *challenge* his explanations on specific points creates the risk that those who study the record will overlook the circumstantial evidence that *corroborates* his accounts on those points. The following summaries identify some of the circumstantial evidence supporting the judge's account that must be confronted in any balanced assessment.

1. *Articles II - V: Judge Hastings Is Not an Idiot.* Judge Hastings had authorized the Romanos to travel so they could go to California. That was where he believed they were spending most of their time. [3217-18] Judge Hastings had observed the Romanos throughout their trial and at other hearings. He was thoroughly familiar with the appearance of each. There was a picture of each of the Romanos in the *Romano* file.

If Judge Hastings had been a participant in Borders's corrupt schemes, Operation Apple Eye would have ended on the day it began, September 12, 1981. Had the judge and Borders talked and met before the meeting, Borders would have examined Rico/Romano more fully. Judge Hastings would in any event have described Frank Romano in detail and shown Borders his picture. Any conspiracy would have ended, at the latest, when that occurred. There would have been no dinner at the Fontainebleau.[8]

2. *Article VI: Even Borders Was Not That Stupid.* The judge assembled four witnesses in his suite at the Sheraton on the evening of September 12. Borders abruptly departed soon after he arrived at the long-planned and well-attended family reunion in Florida. This is not the behavior of two men embarking upon a covert conspiracy.

Borders was the master of the untraceable payphone call. Had he and the judge met at the airport the previous evening, the arrangements could have been simply made. Borders could in any event have called the judge from a payphone in Florida and said, "The Fontainebleau at 8:00 p.m. next Wednesday," and returned to his reunion without inciting suspicion, if the judge were a participant in his scheme.

The only plausible explanation of the evidence is that Borders had to risk a conspicuous departure. He had to return to Washington and deliver a persuasive personal request that would induce an unsuspecting Judge Hastings to join him at the Fontainebleau the following Wednesday. He had to be able to assess the judge's response. The fact that the judge was in the presence of four witnesses when Borders arrived confirms that the judge was not aware that anything covert or improper was afoot. The contrary analysis proffered by the House assumes that both men were idiots.

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[8] The judge called Frank Romano as a witness at trial so the jurors could see for themselves the dissimilarities between him and H. Paul Rico. Such a comparison is no longer possible. Frank Romano is dead, and Rico is eight years older.

3. Article VII: The Timing is Inconsistent with Guilt and Confirms the Judge's Explanation. Judge Hastings instructed Mr. Miller to prepare the *Romano* order returning the money before September 10, 1981, the day on which Dredge told Borders the Romanos were ready to deal. Judge Hastings did not instruct Mr. Miller to complete the order at any time before September 29, the date by which Borders promised it would be out. Had the judge given the instruction to Mr. Miller before September 29, the House might fairly claim that its evidence conflicted with the judge's explanation. He did not, and they cannot.

The House may properly claim that the judge's prompt appearance at the Fontainebleau supports an inference that he was a participant in the conspiracy. However, the Senate must recognize that the failure of this prompt judge to issue or make any effort to issue the order by September 29 is strong evidence that he was not. The judge's explanation is corroborated by the timing of the instruction as well as by the judge's itinerary for October and the testimony of Judge Paine and Mr. Miller.

4. Articles VIII - IX: Of Linguists and Other Experts. In the October 5 telephone conversation, the judge was, by his own admission, reporting to Borders that he was embarking upon a course of conduct that both men knew the judge believed to be a violation of the code of judicial conduct. The cryptic allusions and the pauses and repetitions that so aroused the prosecutors in 1983 and Dr. Shuy in 1989 are adequately explained by these facts. Those so inclined may view this as a "coded" conversation in which a federal judge was reporting in guarded terms that he had drafted a letter by which he proposed to use his position as a federal judge to solicit funds for a suspended lawyer and that he wanted reassurance that the proponent of this plan had confirmed the need before he proceeded further. They may not properly infer more.[9]

Moreover, an analysis of the content of the conversation demonstrates that it cannot be interpreted as a conversation about the *Romano* case, as the House would have the Senate believe. In the House's view, "letters for Hemp" was code for the *Romano* order, and the judge was asking Borders for confirmation that the deal was still on. According to the House, by his response Borders was reporting that he had received the down payment when he said, "he wrote some things down for me" and was reporting arrangements for the payoff when he said, "And then I was supposed to go back and get some more things."

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[9] There is other evidence that tends to corroborate the judge's view. Borders was the master of the payphone. The House has proved that there was a payphone just down the hall from the judge's chambers and that the judge knew where it was. Borders demonstrated his concern about his phones and his ability to insist upon the system when Dredge called two days later. If the parties were engaged in a covert conversation that they feared might be intercepted, they would have made arrangements to assure that it was not intercepted, rather than relying upon a "hastily constructed partial word code."

That interpretation conflicts with the text. If Judge Hastings had been a participant, Borders would have long since reported that Rico/Romano had given him the down payment and that Borders was to return for more on October 3, after the judge issued the order. This report would have been made shortly after the meeting on September 19. The information that the House claims Borders was reporting would have been old news and would not have responded to the question the House claims the judge was asking.

Linguistic analysis is a two-way street. Judge Hastings's explanation of the conversation is plausible and explains all of its parts, whatever suspicions its guarded nature may excite. The interpretation the House urges is not only implausible and unsupported, it does not account for the crucial passage in the conversation. That fact leaves the judge's explanation as the only plausible account.[10]

5. Articles X - XIII: Four Statements That Corroborated a Fact Not in Dispute. Judge Hastings and Pride testified that they spoke by telephone regularly after Pride was released from prison. At the time, Pride was separated from his wife and initially had two and later one part-time job. The judge did not have any of Pride's telephone numbers committed to memory when Agent Simmons interviewed him in October 1981. He would not have recalled them in February 1983.

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[10] The accusation made in Article VIII is dependent upon the accusation made in Article VII. If the conversation concerned letters for Hemp, as the judge has testified, the conversation itself is a prior consistent statement that independently confirms that the letters had been prepared at that time. The House's own experts acknowledge that the results of physical testing are consistent with the judge's account (HX145, 147).

The evidence shows only that the judge is human. During the course of his long and demanding trial, he made an assumption that he should have checked. He did not, and he got the facts wrong. But the facts on which he erred were immaterial. The facts they corroborated were not in dispute. The judge had no motive to testify falsely on these points. There is no evidence that he did so knowingly.

6. Article XIV: More on Telephone Calls. Judge Hastings's recollections were independently corroborated by Barbara Katzen, the law clerk who received his call in chambers, and by his mother. The absence of any records confirming those calls is troubling. But reliance upon the records that remain is independently undermined in two ways. Given the size of the hotel and the fact that it was fully booked, the fact that there were no long-distance calls from any room to any location reflected in the hotel's records for the crucial 76 minute period supports an inference that the system may have been down or malfunctioned. The elaborate system of back-up records built as part of the Hotel Billing Information System by AT&T makes it clear that problems occurred frequently enough to merit the expense of the system. The fact that the records necessary to challenge or verify the accuracy of the records that remain were not gathered early in the case and have now been destroyed precludes serious consideration of the accusation made here.

7. *Article XV: Going Home Is Not Flight.* The House did not specify, even in general terms, the statements it was alleging were false by this Article. The judge testified to his reasons for going to Baltimore Washington International Airport. The fact that he was unaware of a flight scheduled from National Airport is not enough to challenge his explanation. The information he had received about Borders and a natural concern for the well-being of his mother and the consequences of the news that was about to be reported more than account for his conduct and adequately corroborate his explanations. Here as throughout, the House asks the Senate to accept grounds for suspicion as a substitute for proof of guilt.

D. Article XVI
The Incredible Story of Mayor Stephen Clark

Mayor Clark's repeated testimony is false. The judge did not speak with Mayor Clark after his speech on September 6, 1985. Mayor Clark could not have received the information from Judge Hastings at the time he repeatedly claimed the disclosure was made. It was Judge Hastings who disclosed that he had greeted the mayor before the proceedings began and who identified Monsignor Walsh as the person who witnessed the encounter.

The mayor has consistently denied any recollection of the earlier encounter and has firmly testified that that was not when the disclosure was made. The evidence shows that there were numerous alternative sources from whom the Mayor might have obtained this information. The other members of his golfing foursome, FBI agents Amoroso and Jerry Forrester, and Glen "Wedge" Whittle, as well as his *aide-de-camp*, Peter Ferguson, must be included among the possibilities. So must H. Paul Rico, the retired FBI agent who maintained his connections with the FBI and the mayor. That the government was concerned about zoning corruption in Hialeah was not a closely guarded secret in Miami, and the mayor's name had surfaced in other investigations.

The evidence submitted in support of this article bears upon the Senate's deliberations in one way only. The vigor with which the FBI pursued its charges against Judge Hastings, and the fact that neither the FBI nor those who assumed responsibility for investigating the matter explored the alternatives should cast doubt on the entire case. Events have been manipulated and evidence has been gathered and marshalled solely to make a case against the judge. Investigations and evidence that might have established his innocence have been avoided and ignored. The defects in the investigations and evidence that are most dramatically present here are apparent throughout. That the Senate is asked to consider this article at all should raise doubt about those that precede it.

E. Article XVII: A Most Dangerous Game

The article makes no separate accusation, and it is supported by no independent evidence. On the contrary it is a covert attempt to sweep the judge from the bench on the ground that he is not fit for service. Whatever the propriety of such an article in other cases, it is clearly not proper here.

By all accounts, Judge Hastings is an able and probably outstanding federal trial judge. He does his work, and he does it fairly and well. His demeanor is such that prosecutors as well as defense counsel enjoy trying cases before him and respect his decisions. That is the view of judges, lawyers, and citizens from the community he serves. His reputation for honesty and integrity is such that it has survived the on-going assaults of the past eight years. Honesty, integrity, ability, demeanor -- Judge Hastings is well-qualified for the office he holds and is so viewed by those he serves.

This is not a case in which doubts about a man's qualifications for the job he holds may properly be weighed in an assessment of his innocence or guilt. This is a well-qualified judge. The House has accused that judge of specific offenses. In this context, the only issues properly before the Senate are whether the House has fairly and fully satisfied the burden of proof on any of those accusations. This is not a case of impeachment where the Senate may fairly consider a "catch-all" article.

Counsel for respondent has not been able to develop fully the facts that are material to this case, here or in the appendix. Restraints of time and resources has precluded his completing the necessary work in a timely fashion. That is a persistent problem he has addressed elsewhere, a problem whose consequences the committee has observed, and patiently tolerated throughout. He makes this partial submission now to provide interim aid. He shall develop the necessary additional information in respondent's brief to the Senate.

Respectfully submitted,

Terence J. Anderson
Principal Counsel for
United States District Judge Alcee L. Hastings

APPENDIX A

A COMPREHENSIVE STATEMENT OF THE EVIDENCE

Prefatory Note

The Impeachment Trial Committee and the Senate must distinguish among three types of "facts" that are involved in a circumstantial case such as this. First, there are facts established by direct evidence that are not subject to genuine dispute -- e.g., the fact that Borders arrived at the Sheraton Hotel at approximately 10:00 p.m. on Saturday, September 12, 1981. Second, there are disputed facts for which the direct evidence is in conflict -- e.g., the conflicting testimony over whether the group was waiting for Borders to arrive at the Sheraton that evening. Third, there are facts supported by direct evidence where the dispute arises solely because one party claims that events shown by direct evidence can be marshalled to support an inference that conflicts with the fact supported directly -- e.g., the House managers' claim that events can be marshalled to undermine Judge Hastings's testimony that his telephone conversation with Borders on the evening of October 5 concerned letters for Hemp that he had drafted on the bench earlier that day, or his testimony that he and Borders never discussed the Romano case.

Counsel has attempted to provide a comprehensive statement that includes all facts established or supported by direct evidence. Where the fact is in dispute based upon a conflict in the direct evidence, the nature and source of the conflict is identified. Counsel has included factual conclusions only where he believes the evidence and the inferences are not subject to genuine dispute -- e.g., facts concerning the judge's background and reputation. Counsel has not included disputed factual conclusions where the dispute arises from one party's attempt to marshall events or other data to support an inference that conflicts with facts supported by direct evidence. This is an area that should be reserved for argument.

The House managers have offered extensive evidence showing events that respondent believes are irrelevant or immaterial -- e.g., telephone records showing a portion of the actual or possible contacts between Judge Hastings and William Borders in the first half of 1981. In the interest of providing a comprehensive basis for argument, however, counsel for respondent has included the events shown, notwithstanding his views on potential for improper prejudice resulting from the admission of this evidence. He has presented these events in the context in which they occurred, rather than isolating them as the managers attempted at trial. The established presumption of innocence and the traditional assignment of the burden to eliminate plausible hypotheses of innocence in a circumstantial case requires such a presentation in any event, if this evidence is to be considered at all.

In the first part, respondent presents facts concerning the backgrounds and reputations of six individuals who have emerged as significant figures in the accusations made in the first fifteen articles -- the Honorable Alcee L. Hastings, Hemphill P. Pride, II, Jesse J. McCrary, Jr., William A. Borders, Joseph Nesline, and William Dredge. The facts presented there are not, insofar as counsel is aware, subject to genuine dispute. In the second part, respondent presents a narrative chronology that reports events through October 9, 1981, that either or both parties have identified as relevant and places them in context.[1]

In order to aid the Impeachment Trial Committee, counsel for respondent has attempted to make part II inclusive. In respondent's view, however, many of the events reported there are neither relevant nor material to the accusations made against him, a point to be further developed in argument. For that reason, he would ask that the committee specifically note in its report to the Senate that the relevance and materiality of events shown by the evidence remains in dispute, notwithstanding the fact that the occurrence of the events may not be subject to genuine dispute.

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[1] The contraints of time and resources have prevented counsel for respondent from developing the chronology to include relevant events that occurred thereafter or to address the facts relevant to Article XVI, the Mayor Clark accusation. It has also prevented counsel from making the references to the record as extensive or complete as it might otherwise have been. The essential facts are summarized in Respondent's Post-Trial Statement of the Case; they will be developed in his brief to the Senate.

I. FACTS CONCERNING SIX INDIVIDUALS WHO PLAYED SIGNIFICANT ROLES IN THE EVENTS THAT GAVE RISE TO THE ACCUSATIONS MADE IN ARTICLES I THROUGH XV

A. Alcee Lamar Hastings

1. Alcee Lamar Hastings, the respondent in this case of impeachment, was born in Altamonte Springs, Florida, in 1936. He attended public schools in that area until he graduated from high school. His parents were employed in domestic service in the homes of the wealthy outside Florida. For that reason, his grandmother assumed much of the responsibility for his upbringing until he left home to attend college. (3062-64)[2]

2. Judge Hastings graduated from Fisk University with a degree in biology. He attended the Howard University Law School for two years and then completed his legal education at the law school then maintained by the State of Florida at Florida A & M University. He was one of the six students in his class. He graduated and was admitted to the Florida Bar

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[2] Counsel for respondent has observed the following conventions in identifying portions of the record. References to materials that appear in the transcript of the proceedings before the Impeachment Trial Committee identified by page number(s) in the daily transcript without further specification. References to exhibits admitted on behalf of the House or the respondent are identified by the prefix "HX" or "RX" and by the number assigned to the exhibit. References to prior testimony admitted are identified by the prefix "PT" followed by the witness's last name, the proceedings at which the testimony was admitted, and the page numbers in the transcript submitted. Facts the Impeachment Trial Committee have designated Matters Which May Be Treated As Evidence of Fact are identified by the prefix "S" followed by the paragraph number assigned. Citations to portions of the record in United States v. Hastings which will not be included in the printed record here are cited "Hastings Trial at" followed by the page number with the witness's name or other identifying note in parentheses.

in 1963. At that time, many of the kinds of entry-level positions through which many young lawyers began their careers were not open to him. Accordingly, he went directly into private practice, initially with a high school classmate and later on his own. (2663, 3063-65)

3. Judge Hastings maintained a general practice until his appointment to the state court bench in 1977. He represented criminal defendants, including a significant number charged with capital crimes. He also handled civil litigation and commercial and real estate matters. As he characterized it, he had a "Y'all come" practice. Judge Hastings's income from practice was adequate to his needs, but was not lucrative by the standards of many in the legal profession and, indeed, was less than the judicial salaries he has received since his appointment to the bench. (3065-67, 3069-70)

4. From the outset of his career, Judge Hastings was also active in civil rights matters. He brought the suit through which the Broward County public school system was desegregated; he brought or participated in most of the public accommodation suits filed in the area; and he represented two local chapters of NAACP, without fee. (3065-66)

5. Judge Hastings was also active in the affairs of his church, his community, and other organizations. His commitments were such that he was attending one or more meetings almost on a nightly basis. (3068-69) Over time, his reputation grew, and he was invited to speak on issues

of concern throughout the country. (RX139, 1066-67)

6. Shortly after he entered practice, he began his own quest to open Florida's political processes to blacks by seeking office himself. Early in his career he ran for the Ft. Lauderdale City Commission (twice) and for each house of the Florida legislature. In 1970, he ran in the Democratic primary against former Senator Lawton Chiles for nomination as a candidate for the United States Senate. Thereafter he sought a seat in the Florida Public Utilities Commission. He did not win any of these contests. (3067-68)

7. Judge Hastings became active in Democratic Party politics even before he graduated from law school. He was an active participant in the Democratic Party in every presidential campaign from the 1960 election onward. His role in President Johnson's campaign was such that he was among those invited to meet with the President at the White House. He was one of the original five politicians in Florida who chose to support Jimmy Carter early in his quest for the presidency and, through that experience, came to know him personally. (3074-75)

8. Judge Hastings's status in the profession was formally recognized in 1977. From among 79 applicants to fill a vacancy on the Circuit Court in Broward County, Judge Hastings was one of the three candidates submitted to then-Governor Rueben Askew by the judicial nominating panel for that part of Florida. Then-Governor Askew appointed him to that office where he served until his elevation to the fed-

eral bench in 1979. (3070-72)

9. By 1979, Florida's then-Senators Lawton Chiles and Richard Stone had concurred in the establishment of a judicial nominating committee to screen candidates for the federal bench in Florida. There were more than 250 applicants for the five additional district court judgeships authorized in 1978. Judge Hastings was one of the five persons recommended for appointment. He was nominated by then-President Carter, and, with the advice and consent of the Senate, he was appointed to serve as a United States District Judge for the Southern District of Florida. He was invested in October 1979 and assumed the duties of his office the following month. (3072-73, 3075-78)

10. Judge Hastings carried a full and normal caseload on his court until the events that gave rise to his indictment were publicly reported in late 1981. Following his acquittal in February 1983, he promptly resumed the normal duties of a federal judge for the Southern District of Florida. He fully executed those duties from February 1983 until some time after the articles of impeachment that gave rise to this case were exhibited in the Senate. (2148-49, 2158-59, 2170-71, 3079-80).

11. The opinions of judges, lawyers, and others in the Southern District of Florida and elsewhere concerning Judge Hastings's competence and integrity were sought at the time of his initial nomination in 1979 and were presented at his 1983 trial and in the hearings before the Impeachment Trial

Committee. Prior to his appointment he was uniformly regarded as a man of the highest integrity who placed service to his community and to causes he deemed important above the quest for financial wealth. By all accounts he was and has remained a man whose judicial salary was sufficient to satisfy his modest needs. (729-30, 1064-67, 2259-61, 2630-36, 2662-66, 2699-2700, 2842; PT Gary, Hastings 896-99, PT Stewart, id. 1081-82)

12. The judge's reputation and opinions concerning his competence and integrity among judges, lawyers, and others in his community remain unchanged in 1989, notwithstanding the charges against him and the attendant publicity. Senior trial practitioners consistently testified that he was an outstanding trial judge on the federal bench and that his reputation among experienced practitioners who appeared before him was consistent with their opinions. (442-44, 496, 1068-70, 2560-61, 2630-36; RX7, 132) Former prosecutors, including the one who had been chief of the criminal division in the office of United States Attorney for the Southern District of Florida in 1981, testified that their confidence in his integrity, and that of other attorneys who appeared before him, remained unimpaired by the events that had transpired. (442-44, 3003-12; RX7, 155) The Chief Judge of the Southern District of Florida attested to the fact that Judge Hastings had been a fully productive member of the court since his acquittal and that his continuing service had contributed to the work of that court without

causing any problems among his colleagues or in the operations of the court. (2148-50; RX56)

B. Hemphill P. Pride, II

13. Hemphill P. Pride, II, is a lawyer in Columbia, South Carolina. Pride and Judge Hastings met and became close friends when they both attended law school at Florida A & M University. Following graduation, Pride returned to Columbia where he became a trial lawyer. Pride and Judge Hastings maintained their friendship over the years, each acting as godfather to the other's first son. Pride met William A. Borders through his participation in the National Bar Association and, over the years, the two became friends. (1161-64, 2993)

14. Pride was indicted in 1977 on charges that he had improperly diverted funds from a federally financed housing project. Borders arranged to have John Shorter, a Washington lawyer, represent Pride in that trial. Later that year, Pride was tried, found guilty by a jury, and was convicted by the court and sentenced to a term of imprisonment. Pride appealed the conviction. (1164-65, 1181-82; RX110A)

15. Judge Hastings and Borders continued to support Pride throughout this period. Borders gave Pride a rent-free apartment and found him a job in Washington, D.C., while his appeal was pending. Judge Hastings invited Pride to participate in his investitures to both the state and the federal benches. The judge arranged and paid for the transportation necessary to enable Pride and his mother to come

to an NBA convention in Miami in this period. (1233-34, 1237-39; RX108)

16. Pride was not able to pay his debts. After his indictment and throughout his incarceration, his unsatisfied liabilities mounted. In addition, Pride was divorced from his first wife and was married to a second with whom he had a second child, Elliot. (1233-35)

17. Pride's conviction was affirmed, and he entered prison in 1980. Pride asked Judge Hastings to assist him in raising funds for a petition for post-conviction relief. Judge Hastings declined and advised him that he thought such a petition would be fruitless. The judge did send funds to Pride's family. (1177-81, 1239; RX108)

18. Pride was suspended from practice by the South Carolina Supreme Court and, following his conviction, the bar initiated proceedings for his permanent disbarment. Pride opposed those proceedings. By all accounts, Pride had formed and communicated to his friends a passionate and insatiable desire to avoid disbarment and to one day regain admission to practice. (1164-66, 1168, 1239-42, 2701, 2707, 2849-50, 2997-98; PT H. Perry, Hastings 1139-41; PT Stevenson, id. 1040-48)

19. By Pride's own admission, he formed this desire before he entered prison and persisted in it until he was finally readmitted to practice in 1985. Both Judge Hastings and Borders were aware of Pride's desire and the importance of this goal to him. Pride acknowledged that Judge Hastings

and Borders had supported him throughout. He also admitted that each had taken actions to assist him without prior consultation or approval. (1168-70, 1174-75, 1236)

20. Pride's reputation for reliability and truthfulness was ambiguous. In addition to his conviction, those who knew him reported he did not pay attention to detail, was forgetful, and regularly relied upon others for assistance. Pride was not viewed as an evil man; rather, he was viewed as careless and somewhat self-centered. (2843; PT M. Pride, Hastings 1312-16)

C. Jesse J. McCrary, Jr.

21. Jesse J. McCrary, Jr., is an established lawyer in Miami, Florida. He also graduated from the law school then maintained by the State of Florida at Florida A & M University in 1965 and was admitted to the Florida Bar in 1966. He has had a career in public service and private practice that can only be described as distinguished. He has served as an Assistant Attorney General for the State of Florida, a member of its Industrial Relations Commission and its Constitutional Revision Commission, and as its Secretary of State. He is an experienced litigator and trial lawyer. (2538, 2541-43, RX132)

22. Mr. McCrary met Judge Hastings in law school, and the two men have remained close friends since that time. Mr. McCrary also met Hemphill Pride in law school and maintained his association over the years, primarily through activities and meetings of the National Bar Association.

Through the National Bar Association, Mr. McCrary also met and became friends with William Borders. (2540-41, 2543, 2559-60)

D. William A. Borders

23. William A. Borders attended law school at Howard University and, following his graduation, entered practice as a criminal defense lawyer. He was active in both the National Bar Association and the Democratic Party. He became president-elect of the NBA in mid-1979 and served as president from mid-1980 to mid-1981. During the Carter administration, he served as a member or advisor to the Democratic National Committee and its Finance Committee. He was viewed as having and probably had a substantial role in advising the then President and Attorney General on minority candidates for the federal bench. In 1980, President Carter appointed Borders to serve a five-year term as a member of the District of Columbia Judicial Nominating Commission. (1556-57, 2942-43, 2949-50, 2984-2987; RX24)

24. Borders and Judge Hastings met early in their careers through their activities in the National Bar Association and the Democratic Party. Their friendship arose and developed from their shared interests in the affairs of the NBA and their political activities in the Democratic Party. Neither ever referred clients to, or worked on legal or business matters with, the other. (3577-80)

25. By all accounts, until October 9, 1981, Borders was uniformly viewed by persons in public office, persons

prominent in the Democratic Party, and lawyers in private practice as an ambitious young lawyer who had risen to prominence in his profession and in the Democratic Party. Until that time, he was uniformly viewed as a man of integrity and honesty. (2942-44, 2949-2951, 2988-89). Judge Hastings has consistently testified that that was the view he held until he learned of Borders arrest and details concerning his activities (e.g. 3556-59, 3588-90).

26. Borders also had characteristics and engaged in practices that were noticed by many. He was cryptic in his conversations (2945; RX2 at 122-24; PT Cunningham, Hastings 945-46; PT Gary, id. 892). He regularly met friends and associates from out-of-town at the airport and sought reciprocal courtesies when he travelled (PT Stewart, Hastings 1083-84). He was secretive. He preferred to make calls from pay telephones and asked others to do the same, even those in prominent political positions (2985-88; RX 2 at 122-4; PT Stewart, id. 1084-85). There is no evidence that these characteristics and practices excited suspicion among his friends and associates in politics or in the profession prior to his arrest.

27. By all accounts, there was a side of Borders that went undetected until after his arrest. He was a criminal defense lawyer with no files (1556-57). Although he did not represent him, he associated with Joseph Nesline, a reputed underworld figure and gambler in Washington, D.C., and may have been a gambler himself (142-43, 146, 172-75). Among

criminal associates, he held himself out as having the power to fix cases before judges other than Judge Hastings (224-25, 2937-39; RX13). None of his claims with respect to other judges has ever been viewed as credible by the authorities. There is no evidence in the record to show Borders's financial condition or needs in 1981 when the relevant events took place.

E. Joseph Nesline

28. Joseph Nesline lived in the Washington area and was viewed as one of its most significant underworld figures until some time in 1986. He was reputed to be a gambler who had once had interests in casinos overseas. He was reputed to have connections with members of organized crime throughout the underworld, including members of the Genovese family. He had reportedly done business in South Florida with members of the Genovese family and others, and he was acquainted with Santo Trafficante, a reputed organized crime figure residing in Tampa, Florida. (2888-93, 2922, 2925)

29. By all accounts, Nesline was a central figure in Borders's schemes to solicit bribes. According to William Dredge, Nesline introduced him to Borders and Santo Trafficante stayed in Nesline's apartment when he was seeking to meet with Borders. Nesline's testimony has never been obtained, and a 1985 investigation that might have gained information about Nesline's and Borders's relationship and dealings was not pursued.

30. It is no longer possible, however, to determine

Nesline's precise role in these transactions or to obtain the information about this case that he must have had. Nesline's last encounter with the criminal law came in 1986, when he was found competent to enter a guilty plea. The parties have submitted information showing and have stipulated that Nesline had since become incompetent and was no longer competent to testify at the time the hearings were conducted in this case.

31. Nesline is reported to have introduced Santo Trafficante to Borders in connection with an attempt to obtain a bribe in order to fix a case. The source of this information is Dredge, whose credibility is subject to dispute. Trafficante's death (526-27) and Nesline's incompetency make it impossible to now determine the nature and extent of their relationship and dealings with Borders.

32. The record does not reflect when Nesline first met Borders. The earliest evidence in the record of contact in 1981 is a message slip for Borders dated April 9, 1981 (RX29A). There are regular indications in Borders's message slips thereafter (RX29A-35A). It seems clear that it was Nesline who introduced Dredge to Borders, although the date, place, and means of the first contact are subject to dispute. (2884-85)

33. Sometime after Judge Hastings trial and before Nesline became incompetent, he told two persons that he believed that Borders was pulling a scam on Judge Hastings and that the judge was innocent. (2884, 2921-22) The available

evidence indicates that Nesline's then and subsequent relationship with Borders was such that Nesline would have known in fact whether there was conspiracy or whether Borders was running a scam. (2887-2908)

F. William Dredge

34. William Dredge is a career criminal with a record dating back to 1943. (HX218, RX6) In 1981, he was an established fence and burglar whose home and business were in Miami. For some time prior to 1981, Dredge had engaged in a conspiracy to, and had in fact, purchased and sold substantial quantities of illegal drugs known as quaaludes. At the time, he approached the authorities with information that gave rise to the investigation against Judge Hastings, Dredge was a defendant in a drug and racketeering case pending in federal court in Baltimore, Maryland. (HX14, 15; RX5, 9, 14).

35. Dredge had met Nesline early in his career, but had not remained in contact with him. The reasons why Dredge approached Nesline in 1981 are unclear. (347-48, 2881-82, 2908; RX2 at 139).

36. Dredge had also served as a confidential informant for Jimmy Harmon, an agent of the Treasury Department's Bureau of Alcohol, Tobacco and Firearms. According to Agent Harmon, Dredge had wanted to keep his name out of a criminal case in Tennessee in the early 1970's, and Harmon had assisted him. Thereafter, Harmon maintained a relationship with Dredge. Harmon reported that, over the years, Dredge

had supplied Harmon with reliable information on significant cases in which Dredge was not involved. (2953-81)

37. Dredge has given various accounts of his relationship with Borders and his role in the events that are the subject of this case. One account is reflected in the memoranda and telexes prepared by the FBI and a Justice Department attorney after he approached them in 1981. (RX9, 10, 11, 13, 15, 17, 19) Another is reflected in the transcript of testimony he gave over a two-day period before an Investigating Committee of the Judicial Council of the Eleventh Circuit in 1985 (RX2 and 3). At that time, Dredge maintained he had had extensive notes when he went to the FBI, but that he had destroyed them after he obtained a plea agreement in his drug case. (RX2 at 125-26). He also insisted, in his 1985 testimony, that he had no recollection of the events that occurred other than that which he provided and that he had no recollection that could be refreshed by examining documents the Investigating Committee had gathered and that were shown to him. (RX2 and 3 passim). The third is reflected in the testimony and a deposition Dredge gave in this case (141-364; RX4). Dredge maintained before the Impeachment Trial Committee that, after fifteen to eighteen hours of preparation and document review with counsel for the House managers, his recollection had returned (214-15). The accounts Dredge has given of these three occasions is inconsistent and cannot be reconciled on material points.

38. Dredge did not know and had never spoken with Judge Hastings. According to Dredge, Borders may have pointed out the judge or introduced him at a hotel or Borders's office, but Dredge and the judge had never conversed. (237-38; RX2 at 59 and 129-130)

II. A CHRONOLOGY OF FACTS AND EVENTS CLAIMED TO BE RELEVANT BY ONE OR BOTH PARTIES

A. Background Facts: 1979-1980

1. At the time of Judge Hastings's appointment, the United States District Court for the Southern District of Florida was, as it continues to be, among the busiest federal district courts in the nation (3027). Following his appointment, a number of pending cases were reassigned to Judge Hastings to assure a proper distribution of the court's case load. Among the cases so assigned was the case of United States v. Romano, No. 78-364-CR-ALH (S.D. Florida). (2151-58, 3079-80, 3207-12; HX12; RX57, 58; S6)

2. The defendants in the Romano case were Thomas and Frank Romano. The indictment alleged multiple violations of the Racketeer Influenced and Corrupt Organization Act ("RICO") and sought forfeiture of property alleged to be the products of their illegal activities. The government was represented throughout by James Deichert, a Justice Department attorney assigned to the Atlanta office of the regional Organized Crime Strike Force headquartered in Miami, Florida. The Romano brothers were represented through trial and for some time thereafter by Marshall Curran, a lawyer in Miami. (53-55; HX2; S7)

3. Notwithstanding the demands of his office, Judge Hastings continued to engage in a demanding schedule of extra-judicial tasks. He served as a member of the American Bar Association Standing Committee on Professional Practice and Discipline. He continued to participate in the activities of the National Bar Association and its Judicial Council. He served as a director or trustee of organizations such as Bethune-Cookson College. He spoke frequently to bar groups, community organizations, and other groups both within and without Florida. (1065-68, 3093-96; RX139)

4. Hemphill Pride entered prison to begin serving his sentence in March 1980. William Borders assumed office as President of the National Bar Association following the association's annual meeting in July 1980. The records necessary to evidence the contacts among Borders, Pride and Judge Hastings were not sought prior to their destruction or at all. For that reason, there is no evidence to establish a basis for assessing whether patterns of contacts suggested by the partial records that are available for 1981 were in any way out of the ordinary. (1165, RX74)

5. During his final year in law school, Jeffrey Miller had served as a legal intern in the chamber of the Honorable James C. Paine, one of Judge Hastings's colleagues on the federal bench in the Southern District of Florida. Following Mr. Miller's graduation, Judge Hastings hired him to serve as one of his law clerks for a one year term beginning October 1, 1980. Mr. Miller was assigned responsibility for

assisting the judge in cases having an even number. The Romano case was one of the cases Mr. Miller inherited. (1009, 1012, 1042-43; PT Paine, Hastings)

6. The Romano case was not ready for trial until December 1980. The criminal charges were tried to a jury, and the Romanos were found guilty on all counts on December 23, 1980. During the course of the trial, the government alleged and proffered evidence suggesting that the Romanos, like many criminal defendants (2159-66), had access to significant amounts of cash and had previously used cash to improperly influence public officials -- specifically, building inspections on projects they had constructed. The parties agreed that the forfeiture portion of the Romano case should be tried before Judge Hastings sitting without a jury. The hearings on this part of the case were begun, but not completed, later that month. (57-61; HX2; S8, 11, 12, 14)

B. A Narrative Chronology of Events in 1981: A Partial Reconstruction

The House has marshalled evidence showing actual or possible telephone contacts and meetings between Judge Hastings and Borders. The evidence also shows some of the actual and possible telephone contacts and meetings between Judge Hastings and Pride, Borders and Pride, Borders and Nesline, Nesline and Dredge, and Dredge and Borders. Telephone and travel records and witnesses that would have been necessary to reconstruct a more complete account are no longer available. For example, the records for Borders's, Nesline's, and Pride's telephones in 1981 have been destroyed. The only telephone records for these three individuals that remain are message logs from Borders's office and the records for certain telephones to which Borders had access for the period May 7 through October 1981. Similarly, Joseph Nesline had become incompetent and the Romanos had died by the time of the hearings in this case. The account that follows should be studied with limitations such as these in mind.

7. The mid-year joint meeting of the NBA and its Judicial Council was scheduled to be and was held at the Carillon Beach Hotel in Miami Beach, Florida, from February 26 through March 1, 1981. Judge Hastings had agreed to and did deliver a keynote address, and Borders planned to and did attend as the President of the NBA. Only the records from Judge Hastings's telephone are available for this period, and these reflect one call from Judge Hastings's home to Borders's home in the period preceding the meeting -- a call that lasted for three minutes or less on February 20. (3081-85; RX74, 75; S269)

8. The docket in United States v. Romano reflects post-trial activity during January and February 1981 that is typical of the activity throughout the first half of 1981. The Romanos had filed a motion for a new trial or for judgment of acquittal in December. In January, the government obtained an extension of time to respond. The government filed its opposition on February 6. The Romanos retained

Neal Sonnett, a nationally prominent Miami lawyer, to represent them on appeal, and on February 17, he entered his appearance as additional counsel and filed a motion asking that the Romanos be permitted to travel outside the district so that they could explore opportunities in California. (HX2; RX7; S13)

9. Under the initial arrangement, Mr. Curran continued to represent the Romanos at the district court, and he appeared on February 20 when the trial of the forfeiture issue was resumed and concluded. At the close of those hearings, the judge entered an order to protect the property in which the government claimed an interest and directed the parties to submit proposed finding of fact and conclusions of law with supporting memoranda. The government did not oppose the Romanos' request for permission to travel, and the judge entered an order so authorizing on February 26. (HX2)

10. Pride was released from prison in March 1981 and reported that he was in regular telephone contact with Borders and Judge Hastings from that point onward. No records for telephones used by Pride in this period have ever been produced, and the available records do not reflect communications among Judge Hastings, Borders, or Pride during March. (1165, 1239)

11. The earliest indication of contact between Joseph Nesline and Borders shown by the available records are telephone messages recorded in the message logs at Borders's office. The first documented message was recorded on April

9, 1981. The message logs reflect regular contact thereafter. (RX29A-35A)

12. The message logs from Borders's office indicate that Pride called Borders twice on April 9, and there is also a message dated April 9, 1981 from Judge Hastings recorded in the message logs advising that the judge would be "at the office between 12 and 1". The judge's telephone records indicate that he made and charged to his home phone a long-distance telephone call at 12:15 p.m. that day from a pay phone outside his chambers to a pay phone at the United States courthouse in the District of Columbia on that date. That call lasted for one minute or less. Judge Hastings had no specific recollection of these events, and there is no evidence to indicate whether Borders returned the call or whether there was any communication between them at this time. Although there was communication among the three in this period, there are no records to determine whether Borders called Pride or whether Pride or Borders called the judge on or shortly before April 9 (3086-89; RX27A; S51).

13. On April 21, 1981, Judge Hastings wrote a letter to the chairman of the NBA Judicial Council proposing that the NBA and its Judicial Council sponsor a black-tie dinner to honor former President Carter and/or former Attorney General Griffin Bell for their demonstrated commitment to appointing qualified minorities to the federal bench be held in conjunction with the annual meeting in Detroit in July. A significant purpose of the dinner was to raise funds for

the work of the Judicial Council. Judge Hastings suggested that Borders should be able to persuade either former-President Carter or Judge Bell to attend given the role he had played in the campaigns and the administration. Judge Hastings sent a copy of this proposal to Borders and asked for his response on that and on "our report that is due soon." (3090-93; RX145)

14. The record reflects a cluster of calls from Judge Hastings to Borders during two weeks following the submission of that letter. He left messages at Borders's office on April 27 and 30 and on May 1 and 4, the last being marked "urgent." (HX212, 213, 214, S279) He tried to reach Borders at the house of a friend, Madeline Petty, shortly after midnight on May 6 and again left a message at Borders's office on May 7. (HX31h, 197) The judge apparently tried to reach him again early on the morning of May 11. There was a call from the judge's house to Borders's house at 6:27 a.m. and another to Ms. Petty's at 6:28 a.m. Both lasted for one minute or less. (HX31h) The available records do not indicate whether the messages were returned or whether the two talked during this period, although Judge Hastings does recall talking with Borders about this proposal. (3092) Again, the records are not available to determine whether or when Pride had telephone conversations with either man during this period, although it is probable that he did. (1165, 1239)

15. On April 29, 1981, a sealed eight-count indictment

was filed in federal court in Baltimore which charged that William Dredge (and others) had conspired to distribute and had distributed drugs and had used facilities of interstate commerce in aid of racketeering activity (HX 14 and 16). Dredge was arrested at his home in Miami during the afternoon on Sunday, May 10, 1981. He remained incarcerated until he appeared before a magistrate the following morning when an appropriate bond and conditions for his release were established. (160-63)

16. Dredge has provided three conflicting accounts of his initial contact with Borders. When he first approached the government seeking a deal with the government, he claimed that he had known Borders for years. (RX10 at 8) When confronted before a five-judge investigating committee in 1985, he placed the first meeting as having occurred at some time between the date the indictment was filed, April 29, 1981, and the date on which he was arrested, May 10, 1981. (RX2 at 45-47) At the 1985 hearings, he claimed that he had little specific recollection and, when confronted with FBI memoranda recounting information he has allegedly supplied and other records, he claimed that he had no recollection that could be refreshed. (RX2, 3 passim) Before the Impeachment Trial Committee, however, Dredge claimed that his 1989 recollections were detailed and specific. Having been prepared to testify and shown various documents over fifteen to eighteen hours, Dredge recalled the first meeting as having occurred at Joseph Nesline's apartment

during the first week in March. (214-15)

17. Although the date on which Dredge first spoke with Borders and the dates of their subsequent meetings and telephone contacts is in dispute, the documentary record is not. There is no evidence of any contact between Borders and Dredge prior to May 5, 1981, in the long distance records for Dredge's telephones or in the message logs for Borders's office. From May 5 through October, there is evidence of regular contact in these records. (HX10, 11, RX33A, 34A, 35A) Before May 1981, Dredge flew from Miami to Baltimore-Washington Airport; there is no record of a flight to D.C. National Airport. (HX12, 13) From May through July, Dredge flew to Washington's National Airport; there is no record of a flight to Baltimore. (HX17-22)

18. In any event, it is undisputed that Joseph Nesline introduced Dredge to Borders and that Borders aided Dredge in the initial phases of his drug case. Borders flew to Miami on May 5, giving Dredge's telephone number to the airlines as the number at which he could be reached while there. (PT Boone, 19 IC 160-62) This is the first documentary evidence of contact between the two men in the record. There was a further call from Borders's home to Dredge's on May 7. The next call came at 5:38 p.m. on May 10, after Dredge had been arrested. Borders called Dredge's house, and, shortly after this call, Borders called Jesse McCrary's house. The following morning Mr. McCrary appeared and represented Dredge at the bond hearings before a federal magis-

trate in Miami. These are the only communications or attempted communications between Dredge and Borders that are reflected in the record through May 18, 1981. (160-66; HX196b)

19. The docket reflected regular activity in the Romano case during March, April, and May. The necessary proposed orders and memoranda on the forfeiture issues were filed, the last on April 8, 1981. At some point during this period, the Romanos asked Neal Sonnett to assume full responsibility for all aspects of the case, including post-trial motions in the district court. On April 28, the court sent notice advising the parties that the case had been set for sentencing on May 11. On May 4, Judge Hastings adopted in their entirety the proposed finding and conclusions submitted by the government and entered a judgment adjudicating an interest in the Sea Inn Motel valued at some $316,000 and profits realized by the Romanos from their activities in the amount of $846,000. (466, HX2)

20. On May 11, Judge Hastings was sitting in Ft. Lauderdale, Florida, away from his chambers and regular staff. Final arguments and sentencing in the Romano case were among the matters scheduled for that afternoon. At the outset of the hearing, Judge Hastings announced that he was prepared to hear arguments and proceed with sentencing and final disposition. Mr. Sonnett requested a continuance to permit additional briefing on points he did not think were adequately developed in the motion for new trial submitted by Mr. Cur-

ran. Mr. Deichert, the prosecutor, opposed the request. The judge granted additional time. Because of problems in Mr. Deichert's schedule, the court asked counsel for the parties to agree upon a date when all could appear for final hearing and sentencing. (HX4; S19)

21. Insofar as the evidence reflects, Mr. Sonnett had not given any notice of this request to the court prior to the commencement of the hearing. Mr. Sonnett had been unable to notify Mr. Deichert before his arrival at the courthouse and thought it probable that he had not advised the court in advance. Mr. Deichert testified that he did not see any indication that the judge was aware that such a request was coming. Jeffrey Miller, the judge's law clerk responsible for the Romano case, did not recall any such request. In any event, the judge testified that he had expected to proceed and did not know that a continuance would be requested. There is a speculative possibility that Mr. Sonnett may have called the judge's chambers before the hearing, but there is no evidence to support this speculation. (65-66, 124-25, 429-30, 431-33, 463-69, 1014-19, 1100-08, 3218-22; RX4)

22. In May 1981, Joseph Nesline introduced William Dredge to Kenneth Robinson, a Washington, D.C., criminal defense lawyer. Nesline knew Robinson and, when Dredge began shopping for another lawyer to handle his drug case in Baltimore, Nesline apparently recommended Robinson. Dredge tried to get Robinson to "guarantee" the result, offering

him $50,000 as a fee and an additional $50,000 to bribe officials, witnesses, jurors, or anyone else who could assure the result. Mr. Robinson declined, and Dredge left with Nesline. Mr. Robinson recalled these events with some clarity because he later received information suggesting that government agents had been using Dredge as an undercover operative to set him up. Mr. Robinson testified that he was ultimately satisfied that this information was the product of extraordinary coincidence. (2915-39)

23. On May 16, 1981, then President Reagan sought to remove Borders from office as a member of the District of Columbia Judicial Nominating Commission by appointing another lawyer to replace him. Borders filed suit against the President on June 8 seeking to have the President's attempt to remove him prior to the expiration of his term declared invalid and enjoined. (HX24) Judge Hastings recalled that Borders had discussed the situation with him and others before and after filing suit. (3101-02)

24. On May 26, 1981, the South Carolina Supreme Court issued a 3-to-2 decision imposing indefinite suspension, rather than permanent disbarment, upon Hemphill Pride. (RX110A) Judge Hastings and Mr. Pride recalled this as an event that generated considerable relief and as cause for discussion among Pride, Borders, and the judge. (3103-06) The available records reflect only two calls between May 11 and June 1, 1981, both on the morning of May 29 from Borders's residence to the judge's home and office, respec-

tively. Each lasted one minute or less. (HX196b)

25. At the time of this decision, Pride faced substantial unpaid liabilities. He and his wife had separated. Shortly thereafter, Pride lost one of the two consulting positions he had obtained after his release from prison. By his own admission, Pride was in desperate financial straits throughout the period relevant to this case. (1233-35)

26. The nature of Judge Hastings's extra-judicial travel commitments is illustrated by his travel schedule for May and June. His schedule called for him to be in New Orleans on May 1st and again on the 5th and 6th; in Newark, New Jersey on May 7; in Lakeland, Florida, on May 9; in Cincinnati, Ohio, from June 3-6; in St. Petersburg, Florida, on June 20-21, and in Tampa, Florida, on June 24-28. (RX139) Airline reservation records indicate that the judge's plans were frequently adjusted in late April and May. He appears to have adjusted his schedule so that he could fly directly from Miami to Newark on May 5. That flight was scheduled to depart from Miami International Airport at approximately the same time as Borders's return flight was scheduled to depart for D.C. The judge testified that he had not been aware that Borders was coming to Miami that day and that he did not see him. (3366-70) The records showing whether and which flight Borders actually took on that date are now missing. (PT Boone, 19 IC 159-63, id. 22 IC 109-25)

27. Activity continued in the Romano case throughout June and July 1981. On June 1, Judge Hastings issued an or-

der establishing the supplemental briefing schedule for post-trial matters in the Romano case and setting the case for final argument and sentencing on July 8, 1981. On June 5, Sonnett filed the supplemental motion for new trial and a motion to reconsider the forfeiture judgment with supporting memoranda. (HX2)

28. On June 19, 1981, the court of appeals for the circuit issued its opinion in United States v. Martino, (RX36). Martino ruled that cash profits and proceeds of a racketeering enterprise were not subject to forfeiture under the RICO Act. By letter dated June 25, Mr. Deichert sent a copy of the Martino opinion to the court and to Mr. Sonnett. On June 29, the government filed oppositions to the Romano's motion to reconsider the forfeiture, arguing that Martino was wrongly decided and was distinguishable in any event. On July 6, Mr. Sonnett filed a reply, arguing that Martino required the court to vacate the portion of the forfeiture judgment that had adjudicated forfeit the $846,000 in cash proceeds. (80-82, 106-08, 437-39; HX2, RX36; S 21)

29. Two other significant cases were assigned to Judge Hastings in June. On June 3, John Owens and Martha Rogers, Justice Department attorneys assigned to the Organized Crime Strike Force in Miami, filed a major indictment that named Anthony Accardo, Santo Trafficante, and fourteen other persons as defendants. The resulting case, United States v. Accardo, No. 81-230-CR-ALH, was routinely assigned to Judge Hastings. (HX216) On June 10, a major civil action was

filed to protect the rights of recently arrived Haitians who had been detained and threatened with summary return to Haiti. The suit named the Commissioner and other officials of the Immigration and Naturalization Service as respondents and sought emergency and permanent equitable relief to restrain these officials from implementing the administration's announced policies. The case, Jean v. Meisner, 81-1260-CIV-ALH, was also assigned to Judge Hastings. (3214; RX162)

30. Other events occurred in this period that the House managers or respondent have alleged were relevant. The available records indicate that Dredge travelled to Washington on May 28 (HX109) and that he called Borders twice, once on June 16 and once on June 18. (HX10f) Borders filed suit against President Reagan in Washington on June 8, and the court conducted a status conference on June 10 and heard argument on June 18 in that case. (HX24) Apart from an indication in airline reservation records that Judge Hastings had a reservation to fly to Washington on June 17 (HX97), there is no evidence of any communications between Borders and the judge during June. The available records do not show whether the judge took this flight and there is no information concerning a return flight.[3] Although the testimony indicates that Pride was in regular telephone contact

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[3] The House Managers did not examine the judge concerning this flight, and it is not reflected in the itineraries prepared by the judge's secretary. (RX139) The airlines specialist was not examined concerning this record. (PT Boone 22 IC 101-171).

with Borders and Hastings, there are no records from which the timing of these contacts can be determined. (1165, 1237, 1239)

31. The events scheduled for July indicated that there would likely be substantial communication between Judge Hastings and Borders. Borders planned to be in Miami on July 11, and he was to spend the afternoon visiting with Judge Hastings and Jesse McCrary. Judge Hastings was to be in Washington from July 17 to July 20 to attend a meeting of the ABA Standing Committee on Professional Practice and Discipline. Both men were scheduled to be at the NBA meeting in Detroit scheduled to run from July 27 to July 31. These events all occurred as planned. In addition, on July 7, the federal court in Washington ruled in Borders's favor in his suit against President Reagan, and by all accounts Borders was ecstatic. (2565, 3109-11, 3113-16, 3118-21; HX24, 110; RX79, 130, 147)

32. Telephone records show a call from Judge Hastings's home and his office to Borders's home and office on July 5 and 7 respectively. Each lasted for one minute or less. They show further calls on July 9 and 16. On July 9, the judge left a message advising Borders when the judge would return to Miami from a court sitting in Key West, Florida. The call on July 16 lasted one minute or less. (S284, 285, 286; HX31f)

33. Dredge was also in regular contact with Borders during July. Telephone records reflect a call from Bor-

ders's home to Dredge's home on the evening of July 5. Dredge flew to Washington on July 7 and remained there until July 9. According to Dredge, he was with Borders on July 7, the day that Borders learned he had won his suit against the President. Dredge also reported that he stayed at Joseph Nesline's apartment and observed Santo Trafficante there with Mr. Nesline. Dredge returned to Washington on July 16. At some point during these trips, Dredge retained Roger Spaeder and his firm, Zuckerman, Spaeder, Kolker & Evans, to represent him in his case in Baltimore. (167-77; HX111-118)

34. All briefs and memoranda received in Judge Hastings's chambers were routinely routed directly to the law clerk responsible for the case in which they were filed. Pursuant to this practice, Mr. Deichert's letter advising the court of the Martino decision, the government's memorandum discussing that decision, and the memorandum filed on behalf of the Romanos on July 6 went directly to Mr. Miller, the clerk responsible for the case. (3222-23, 1045-48)

35. Final argument and sentencing in the Romano case was one of five matters on Judge Hastings's calendar for the morning of July 8, 1981. Mr. Miller delivered handwritten memoranda concerning Martino and the other pending motions and discussed the issues with the judge only minutes before the hearing began. Mr. Miller has consistently testified that Judge Hastings had not read or had the opportunity to read the Martino decision or review the motions and memoranda prior to the hearing. (1047-54, 1081, 3223-26; HX119;

RX36, 38, 141A)

36. During the hearing, however, the judge advised the parties that he was familiar with the Martino decision. After hearing argument on the forfeiture issue, the judge announced that he was "prepared at this time to deny your motion, Mr. Sonnett [the motion to reconsider the forfeiture], and I will give a brief order with reference to this request. I will allow the forfeitures as previously set out by the Court to be maintained, and, as indicated, a brief order will be prepared that will recite the reasoning of the court at least insofar as the new matters that have arisen, more specifically the cases cited by the parties up to this time." (HX6 at 65)

37. During the hearing, Judge Hastings also heard argument and denied the Romanos' motions for a new trial (HX6 at 3-26). Judge Hastings also heard arguments on sentencing (HX6 at 66-83). At the conclusion of the hearing, Judge Hastings entered judgments of conviction and sentenced each of the Romanos to three years in prison, with recommendations that they be confined in a minimum security facility and be considered for early parole and that arrangements be made to accommodate Thomas Romano's medical problems (HX6 at 83-95). The sentences imposed were consistent with the recommendations of the Probation Office and the arguments of counsel for the government. (HX1; RX118, 119) Without objection, the court continued their bond and the authorization for travel throughout the United States pending appeal.

(HX6 at 95-98)

38. Judge Hastings has consistently testified that, in fact, he had not read the Martino decision before the hearing. (3223) Mr. Sonnett told his clients after the hearing that he did not think the judge had read Martino and that, when he had, he would reverse his position or be reversed on appeal. (439-40) Mr. Miller has consistently testified that, when the judge instructed him to prepare an order concerning the forfeiture, he [Miller] understood that the judge wanted to stand by the original order, but only if that could be done consistently with the law of the circuit. (1054-57) Mr. Deichert has since acknowledged that the judge was required to vacate to cash proceeds portion of the original order if he followed Martino. (79-80, 111-112) Mr. Miller has also consistently testified that he was unable to distinguish Martino satisfactorily. By the end of July, he had prepared a draft order (HX120) that would have called for additional briefs on the issue. (id. at 12) He did not submit this draft to the judge, and he had to set the Romano file aside in August to work on more pressing matters. (1028-31)

39. Borders did travel to Miami on July 11, 1981. The judge picked him up, and they went to Jesse McCrary's home, where they spent the afternoon. The judge then drove Borders to a taxi stand where he left him. According to Mr. McCrary and Judge Hastings, the discussions were general and did not address any subject that has been identified as rel-

evant to these proceedings. (3110-3111, 2565)

40. Judge Hastings was in Washington for the ABA standing committee meeting from July 17 to 20. During this period, he and Borders had luncheon with a lawyer from Columbia, South Carolina, who was acquainted with Hemphill Pride and his problems. Borders also agreed to meet the judge, Noel Smith, and Brenda and Danny Russell at the Lion D'or for dinner on one of the evenings during this visit. The judge and the others assembled as agreed. Borders did not show up. (3112-13, 3115-16)

41. On July 20, 1981, Dredge went to the office of the United States Attorney in Miami to try to make a deal in his drug case. Over the next few days, he told attorneys for the Strike Force responsible for the Accardo case and agents of the FBI that Borders was soliciting a bribe from Santo Trafficante to fix the case before Judge Hastings. He also told them that Borders was also seeking $150,000 bribe from the Romano brothers to assure that their jail sentence would be eliminated. (RX11 at 4)

42. In these initial interviews, Dredge also reported that Borders was engaged in a similar scheme involving a federal judge in Louisiana. (RX13 at 2) Dredge reportedly claimed that he had known Borders for years (RX10 at 7) and implied that he had heard Borders and Hastings discussing a bribe scheme. (RX11 at 4) Dredge subsequently confirmed that he had never heard any conversation between Borders and the judge. (237-38; RX2 at 59, and at 129-130)

43. The FBI had information from the outset indicating that Borders had made unfounded claims with respect to other judges. (RX13 at 12) Moreover, Dredge's report, as it related to Borders was corroborated. As Dredge predicted, Borders made a trip to Miami and was observed talking with Trafficante on July 21. (535-536) The FBI, however, had no evidence, other than Dredge's claims, to indicate that Judge Hastings was, or was a likely candidate to be, involved in such a corrupt scheme. (2415)

44. Judge Hastings, Borders, and other black judges and lawyers assembled in Detroit for the NBA meeting from July 27 to 31. Hemphill Pride was expected but did not come. Borders called Pride from the hotel and several of those present, including Judge Hastings, spoke with him and urged him to come to Detroit. After that call Borders "passed the hat" and collected some $750 to assist Pride. (1236, 3118-20) According to Judge Hastings, Borders pressed the judge to prepare letters soliciting funds and character references to aid Pride in his efforts to gain readmission to the bar. The judge has consistently testified that Borders thereafter persisted in this request, notwithstanding the judge's repeated statements that he thought such an effort would conflict with his ethical responsibilities as a judge. (3120, 3153-54)

45. During August, Dredge remained in contact with Borders. The available records reflect three telephone calls -- two from Borders to Dredge, one on August 18 and

one on August 23, and one from Dredge to Borders on August 31. (HX27a, 196d, 11d) Dredge reported to the FBI that Borders was coming to Miami to meet with Trafficante again. Borders's visit occurred on August 21, and the FBI again observed him talking with Trafficante. (538-541) Although not reflected in the available records, Dredge reportedly said that he was in Washington at Borders's office on August 29 and 30. (RX 10, 13, 14) By his own admission, Dredge was maintaining contact with Borders during this period in order to keep his interest in the Romano deal alive while Dredge attempted to negotiate a favorable deal in his drug case. (182, 254)

46. At the outset, the FBI's Miami office assigned Special Agent Anthony Amoroso to serve as the supervising agent and Special Agent William Murphy to serve as case agent in the investigation initiated by Dredge's report, an investigation assigned the code name "Operation Apple Eye." In accordance with Justice Department policy, the legal aspects were transferred from the United States Attorney's office in Miami to the Public Integrity Section of the Justice Department's Criminal Division in Washington. The Public Integrity Section assigned the case to Reid Weingarten, one of the trial attorneys in the section. (After the undercover operation and Borders's arrest, Robert Richter, a deputy chief in the section, was assigned to assist in the prosecution.) (529-530, 1572, 2402, 2408)

47. Negotiations between Dredge and the FBI and the

FBI and the Justice Department continued throughout August. Dredge eventually proposed the undercover scenario that was adopted. Dredge would introduce an undercover agent posing as one of the Romano brothers. The undercover agent would agree with Borders on the price, motions to be filed, and time and would insist upon a show of proof such as the restaurant scenario that Dredge had reported that Borders had suggested. The undercover agent would also agree to an exchange of front money (RX10 at Five). The Miami office reported that the United States Attorney in Baltimore was balking at the proposal in view of the limited cooperation Dredge was offering and requested that headquarters officials intervene with appropriate Justice Department officials to assure the deal was accepted. (RX8 at Seven)

48. At some time early in the investigation, Agent Murphy or Reid Weingarten contacted James Deichert, the prosecutor in the case, to apprise him of the investigation and to ask him about the case. As a result of these conversations, Mr. Deichert was asked to inform Agent Murphy about any telephone conversations he had with Mr. Miller about the status of the Romano order. Mr. Deichert did call in August and learned that Mr. Miller was preparing an order. (115-19, 1062-64)

49. Borders's term as president of the National Bar Association had concluded at the annual meeting in Detroit. On August 24, 1981, Barbara Whiting, a NBA official, sent a letter to Judge Hastings inviting him to become a sponsor of

a dinner-cruise honoring Borders for his service as president of the NBA. The event was initially scheduled to be held on October 16, 1987. (RX156) Judge Hastings promptly agreed and sent a check to Ms. Whiting. (3123-25; RX131)

50. Jeffrey Miller had set the draft Romano order aside in late July to work on other more pressing matters that had arisen in August. On August 27, the court of appeals issued a decision in United States v. Peacock, 654 F.2d 339 (5th Cir. 1981). Peacock reversed a district judge who had entered a RICO forfeiture order that conflicted with Martino and had reiterated that Martino remained binding upon all district courts in the circuit. Mr. Miller promptly brought the Peacock decision to the judge's attention and told him that the court of appeals was following Martino and, for that reason, that he should give the Romanos back the money he had included in his original forfeiture judgment. According to Mr. Miller, the judge promptly instructed him to do so and to prepare an order that conformed to the law of the circuit but that also expressed the judge's disagreement with Martino and Peacock. The undisputed evidence indicates that this conversation occurred in early September and in any event before September 10, 1981. (1058-60)

51. During his final year in law school, Mr. Miller had interned in the chambers of Judge James C. Paine and had impressed Judge Paine with his work. In the spring of 1981, Judge Paine had received authorization to hire a third law

clerk to assist him in meeting the demands of his caseload. The authorization became effective September 1, 1981. Judge Paine invited Mr. Miller to take this position as soon as his clerkship with Judge Hastings ended, and Miller agreed. At some point thereafter, it became clear that Mr. Miller would probably not be able to complete his work on pending matters assigned to him by the end of September. Judge Hastings and Judge Paine discussed the matter, and Judge Paine agreed that Mr. Miller could stay to complete his work with Judge Hastings. Their agreement was that Mr. Miller would start with Judge Paine as soon as he finished his work with Judge Hastings and not later than November 1. (3232; PT-Paine, Hastings 1007-10)

52. Pride continued to communicate with Borders and Judge Hastings over the summer and to seek their advice on matters that might affect his chances for readmission to the bar. Both Pride and Judge Hastings recalled that Pride had been concerned about the affect that a speech he had given might have. Pride had criticized the South Carolina Supreme Court for its employment practices. Borders and Judge Hastings advised him to seek an appointment with the Chief Justice and apologize. Pride did finally meet with the Chief Justice in early September. Pride recalled that he had discussed this meeting with Judge Hastings both before and after it occurred. The absence of records makes it impossible to fix the dates of these communications. Pride also visited Borders in Washington in September. (1168-74, 1235-41,

3122-23)

53. Earlier in the year, Judge Hastings had agreed to speak in Harrisburg on Monday, September 14, 1981. (RX94) Jesse McCrary had agreed to speak in Norfolk, Virginia the preceding week and had planned to spend the weekend in Washington to visit with his daughter and other friends. When Judge Hastings learned of Mr. McCrary's plans, he agreed to come to Washington for the weekend and stay at the Sheraton Hotel with McCrary. The judge discussed his plans with Borders. (2547-51, 3125-28)

54. Borders's family had scheduled a family reunion to be held in Ft. Pierce, Florida, on the weekend of September 12-13, and Borders had planned to attend. Judge Hastings testified he was aware of Borders's plans and that Borders was aware of McCrary and his plans. (3127-28, 3130-32) On August 28, the judge had made reservations to fly to Washington on September 10. [PT-Boone at 130-31 and Ex. R(23)]. According to the judge, Borders had agreed he would pick him up at the airport on that date. (3130)

55. The government finally gave Dredge a deal that was acceptable on September 10, 1981. (HX23) Under that deal, Dredge agreed to plead guilty to a single count of the indictment and to introduce Borders to an undercover agent posing as one of the Romanos. (_Id_. at 1 and App. A to HX23) The government agreed that Dredge would not be called as a witness and would not be wired or recorded in any of his activities in cooperating under the agreement. (_Id_. at 1-2)

Although the government agreed not to impose any further obligations upon Dredge, it also agreed that Agent Murphy would appear and report to the sentencing judge, in camera, the full nature and extent of the cooperation Dredge provided. (Id. at 2) The agreement was formally issued on September 11 and signed by Dredge and his attorney on September 12. (532; HX23).

56. During the week of September 6, 1981, Judge Hastings presided over a jury trial in a criminal case, United States v. Vicknair. As the trial progressed, it became clear that it would not be over by September 10. That morning the judge changed his flight reservations for September 10 to a flight on September 11, 1981. The records reflect that Borders called Judge Hastings's chambers on the evening of September 10, 1981. The trial in fact ended earlier than expected on September 11, and the judge tried to catch a plane departing from Miami at 3:48 p.m. That flight was delayed, and the judge left messages at Borders office and called Shirley Ross, a woman whom he was to take to dinner, to inform them of the delays. The judge's flight eventually left Miami at 5:50 p.m., and arrived in Washington shortly after 8:00 p.m. on September 11. The judge reported that his luggage was delayed. The judge took a taxi to Shirley Ross's apartment to pick her up for dinner. According to the judge, the driver got lost. The judge and Ms. Ross went by taxi to the Sheraton. The hotel's records indicate the judge checked in at 10:14 p.m. (3128-36, 3429; HX28, 29, 30,

31d, 32; RX88; S37, 38; PT Ross, Hastings 1439-43)

57. Dredge called Borders in Agent Murphy's presence at 1:30 p.m. on September 10 and told Borders that the Romanos were ready to deal. Borders agreed to meet with Dredge and one of the Romanos at Miami International Airport the following Saturday morning, on September 12. Borders had initially been scheduled to fly to Miami for his reunion weekend on a flight that left at 7:30 p.m. He changed his reservation and in fact departed on a flight that left at 9:30 p.m. (184-85, 549-52; HX33-35; S43, 44)

58. The FBI observed Borders's departure from Washington National Airport on September 11. The overlap between the judge's arrival at 8:00 and Borders's departure at 9:30 p.m. establishes a time when the two men could have met. Judge Hastings has consistently denied that such a meeting took place and has testified that delays in receiving his luggage and the fact that the cab driver had difficulty finding Ms. Ross's apartment were responsible for the time it took him to get to the Sheraton. The FBI did not observe any meetings between Borders and the judge, and there is no evidence that such a meeting occurred. (3134-36; PT Ross, Hastings 1439-43)

59. Through Special Agent Amoroso, the FBI contracted with a retired FBI agent, H. Paul Rico, to serve as an undercover agent posing as Frank Romano. On September 12, Dredge introduced Rico to Borders as Frank Romano. Borders asked Dredge to wait until after Borders and Rico/Romano had

conducted their business so that Borders could talk with him. Dredge agreed. (185, 548, 752-53; HX38A, 38B)

60. The meeting between Rico/Romano and Borders was recorded. Borders confirmed that the price would be $150,000. Borders agreed that, in order to demonstrate the judge's involvement, the judge would appear for dinner at the Fontainebleau Hotel on the following Wednesday, September 16, and would, within 10 days, issue an order returning a substantial amount of the property that he had adjudicated forfeit. Rico/Romano agreed to meet with Borders at the airport the following Saturday, September 19, to put an unspecified amount of money "up front". The two agreed that after the order had been issued, the Romanos would dismiss their appeals from the convictions and file motions asking the judge to mitigate their sentences. (HX38A,B)

61. Borders went from that meeting to his family reunion in Ft. Pierce, Florida. He cut short his attendance and made arrangements to fly from Orlando, Florida, to Baltimore, Washington Airport that evening. His plane arrived in Baltimore at 9:00 p.m. (794-97; HX72, 73, 74)

62. Judge Hastings and Jesse McCrary had a suite with adjoining rooms at the Sheraton. They spent the afternoon calling friends and visiting while they watched television and had drinks. Mr. McCrary's daughter, Bonnie McCrary, came for a visit, but did not remain because she had other plans for the evening. Donna Myrill, a former secretary whom Mr. McCrary had encouraged to go to law school, joined

the party for the evening. Judge Hastings had invited Pearl Dabreau, a woman from Trinidad he had met earlier that year, to visit. Ms. Dabreau agreed to return for drinks and dinner and asked if she could bring her sister, Margaret. The judge agreed. (820-22, 2505, 2548-55, 2678-81, 3136-41; Dep. of Dabreau-Owens, 1-4)

63. The five-person party assembled about 8:00 or shortly thereafter that evening in the hotel rooms for drinks and snacks, the last arriving around 8:00 as near as anyone can recall. They were still socializing at about 10:00 p.m., when Borders appeared at the door. Judge Hastings has consistently testified that he did not expect Borders and was surprised when he showed up. His testimony was corroborated by Mr. McCrary who also testified at the 1983 trial. Both the Dabreau sisters testified that they did not recall that the group was waiting for anyone else to arrive. Only Donna Myrill testified that the group was waiting for Borders, although she did not specify when or from whom she received the information. The FBI had interviewed the Dabreau sisters, at least, before the 1983 trial. The government did not call any of the three to testify at the 1983 trial. (822-25, 2505, 2555-59, 2681-86, 3141-45; Dep. of Dabreau-Owens, 4-14 and Dep. Ex. A,B)

64. Borders joined the group for dinner and drove the judge and Mr. McCrary to the airport the following morning. According to Judge Hastings, it was during this period that Borders told him that he would be in Miami on Wednesday,

September 16, and asked Judge Hastings to meet him in the main dining room of the Fontainebleau at 8:00 p.m. The judge reported that he agreed. (2556-57, 3144-3148)

65. Judge Hastings invited Essie Thompson to have dinner with him at the Fontainebleau on Wednesday, September 16, and made reservations for two. They arrived at 7:45 p.m. They went to the main dining room where Judge Hastings spoke with the maitre d' and the hostess. They were seated at a table for four, but two place settings were removed. After they had ordered, Judge Hastings excused himself, left the dining room, and went to the Poodle Lounge and Steak House, another facility in the hotel. Upon his return, he told Ms. Thompson he had been looking for friends from D.C. According to the judge, he had been looking for Borders and had made inquiries with the maitre d' and hostess and in the Poodle Lounge. The judge had not previously told Ms. Thompson whether he expected to meet anyone at the Fontainebleau. (837-47, 3147-51)

66. Borders had in fact made arrangements to take a friend, Madeline Petty, to Las Vegas to see the Leonard-Hearns fight at Caesar's Palace. There is no evidence that the judge was aware of this arrangement. They flew to Las Vegas on September 15. The available records indicate that Dredge placed a call to Caesar's Palace on the evening on September 16. There is no evidence concerning the purpose of this call or further communications that may have occurred on that evening. Borders and Ms. Petty returned to

Washington on the evening of September 18. Borders remained at the airport to catch a flight to Miami for his meeting with Rico/Romano on September 19. (HX10c; S77, 78, 79, 90, 19)

67. Borders met with Rico/Romano on September 19, and again the conversation was recorded. Rico/Romano gave Borders $25,000 cash as a down payment. Borders advised Rico/Romano that the order returning the property would be issued within 10 days of that date, -- i.e. by September 29. Borders insisted that the balance be paid after the order was issued, rather than after the sentences had been reduced, on the ground that "the others guys gotta be having twenty." Rico/Romano responded, "Yea, right." They agreed that they would meet again at Miami International Airport on Saturday, October 3, for the final payoff, and Borders confirmed that the order would be done by then. (HX43A,B)

68. On September 21, 1981, Barbara Whiting sent another letter to Judge Hastings with the formal invitation for the dinner-cruise honoring Borders. The date of the event had been changed to Friday, October 9, to avoid conflict with a local judicial conference meeting scheduled to occur in Washington on October 16. (3156-58; RX85)

69. The FBI planned the remaining steps in the covert phase of Operation Apple Eye on the premise that Judge Hastings would issue the order on or before September 29 (RX23). Justice Department attorney Reid Weingarten advised that even these two shows of proof, the dinner at the

Fontainebleau and the timing of the order, could be explained as coincidental and agreed that electronic surveillance should be initiated to seek direct evidence of the Judge's involvement. After the order was issued and the wiretaps in place, the undercover agent was to call Borders to attempt to provoke conversations about the Romano case between Borders and Hastings that could be recorded. The final payment of $125,000 would then be made on October 3; Borders would be arrested immediately; and an attempt would be made to gain his cooperation. (RX22, 23)

70. There is no record of any telephone contacts between Judge Hastings and Borders between September 10 and October 5. Judge Hastings testified, however, that he recalled speaking with Borders by telephone on September 20 or 21. According to the judge, Borders did not respond when the judge asked him about his failure to appear at the Fontainebleau. Judge Hastings has never claimed that he could recall the particular topics discussed in specific telephone calls indicated by the records. He has consistently testified that he and Borders regularly discussed Pride's problems and that Borders persisted in urging the judge to prepare letters seeking support for Pride, notwithstanding any ethical reservations he may have had, throughout this period. (3151-56)

71. At no time between September 10 and October 5 did Judge Hastings instruct or pressure Mr. Miller to complete the Romano order. Mr. Deichert again called Mr. Miller

about the case on September 22, 1981. (115-17, 1060-64)

72. The forfeiture order was not issued on September 29. The Justice Department sought and obtained court authorization to intercept and record telephone calls to and from telephones at Borders's home and office. On October 2, Rico/Romano called Borders to ask what had happened. Borders said he did not know. Rico/Romano called on October 4 and again asked; Borders said he had not been able to find out. On Monday, October 5, at 4:22 p.m., Rico/Romano called again. This time Borders reported the matter "had been taken care of" and the order would go out "probably today or first thing in the morning." Borders also told Rico/Romano: "Your friend should tell you something. Where you say you went before." (HX50A, 50B, 52A, 52B, 53A, 53B)

73. There is no evidence that Borders talked with Judge Hastings at any time after September 21 and prior to the call at 4:22 p.m. on October 5 in which Borders assured Rico/Romano the matter had been taken care of. There was a call made by an unidentified male, not Borders, from Borders offices to Judge Hastings chambers at 4:50 p.m. on October 2. (HX51A, 51B) No message was left. The only other males who worked in the same offices as Borders were other lawyers, two of whom -- James Cobb and Dudley Williams -- were also friends of Judge Hastings. Although it was not intercepted and there is no record of it, Judge Hastings testified that Borders had called his home on Sunday, October 4, and had left a message with the judge's mother

asking the judge to call him about Pride. At the time, the judge was at the Sonesta Beach Hotel on Key Biscayne, Florida, attending a meeting of the Florida Chapter of the NBA. (3160-62; RX128)

74. Judge Hastings reported that he did become concerned when he had not received an order on the Romano forfeiture from Mr. Miller by early October. The judge was scheduled to leave Miami on October 7 and to be out of Miami for most of the remainder of the month. Mr. Miller had already extended his term and was scheduled to begin working for Judge Paine as soon as he completed work on matters that had been assigned to him. Judge Hastings had previously had difficulties when a clerk had left before completing a significant assignment. The judge reported, and Miller confirmed, that on the morning of Monday, October 5, Judge Hastings inquired about the Romano order and, when Miller said it was incomplete, that the judge told him to do it that day. Mr. Miller reported that it was unusual, but not unprecedented, for the judge to issue such a pre-emptory instruction. According to the judge, it was his travel schedule and concern over Mr. Miller's impending departure that caused him to give this instruction. (1033-37, 1061-62, 3229-31)

75. On October 5, Judge Hastings was presiding over a jury trial in a criminal case, United States v. Santarelli. The judge testified that during the course of the day he prepared three hand-written draft letters. One was a draft

of a letter to solicit friends for Hemphill Pride. Another was a draft of a letter to solicit character references for Pride. The third was a draft of a letter to Pride seeking his comments and views on the other two proposed letters. The judge testified he wrote these letters as a result of Borders's persistent requests and because that was what he assumed Borders had intended to discuss when he had called the judge's house and left the message with the judge's mother the preceding day. (3166-71; HX154, RX106)

76. At 5:12 p.m. on October 5, after the trial had been recessed, the judge called Borders. That call was intercepted and recorded and has since been subjected to intense analysis and conflicting views as to its significance and meaning. The transcript of this conversation that was admitted in evidence was prepared by a professional linguist and includes pause fillers and repetitions that are ordinarily omitted in transcripts and that are not noticeable in ordinary conversation. (877, 916-20; HX53A,B)

77. In that conversation, the judge told Borders, "I've drafted all those, ah, ah, letters, ah, for Hemp, and everything's okay. The only thing I was concerned with is did you hear if, ah, you hear from from him after we talked. Borders responded that he had: ". . . I talked to him and he, he wrote some things down for me." The judge responded, "I understand." Borders continued, "And then I was supposed to go back and get some more things." The judge responded: "Alright, I understand. Well then, there's no great big

problem at all. I'll, I'll see to it that, ah, I communicate with him. I'll send the stuff off to Columbia in the morning." (HX53A,B)

78. The judge has consistently testified that the conversation concerned letters for Hemp and had no other meaning. According to the judge, he called Borders to report that he had drafted the letters for Hemp, as Borders had persistently requested, and to inquire whether Borders had talked with Pride to confirm his needs. The judge reported that he understood Borders's response as confirmation that Pride, during his prior conversations and visit to Washington, had supplied Borders with information and that Borders was supposed to contact him for more. The judge said that he saw no problem because he intended to transmit the two drafts to Pride for his approval in any event. For that reason, the judge told Borders that he would send the drafts to Pride in Columbia, South Carolina, on the following day. (3172-75)

79. Notwithstanding that conversation, the judge has consistently testified that he reflected upon the matter that night and again concluded that his position as a judge would make it improper for him to solicit funds. He decided that he would inform Borders and Pride when they met at the dinner-cruise on the following Friday. He did not have the drafts typed. (3175)

80. The trial in United States v. Santarelli continued on Wednesday, October 6. During the course of the day,

Judge Hastings issued an extensive preliminary injunction in Jean v. Meissner. (RX162) Toward the end of the day, Mr. Miller submitted the completed Romano order. The judge signed it and asked that it go out that day. Marilyn Carter, the deputy clerk assigned to Judge Hastings's chambers, processed the orders and prepared copies for mailing to counsel. She marked the envelope for the prosecutor's copy "special delivery." She said she did this without instruction from the judge because she thought the order was important. She gave the envelope to Jeffrey Miller to deposit in the mail as he left for the day. (1037-38, 2781-82)

81. On October 7, Rico/Romano called Borders at 12:19 p.m. to inquire about the order. Borders told him it had gone out the previous morning. At 7:39 p.m., Borders called Rico/Romano. Rico/Romano confirmed receipt of the order and agreed to try to come to Washington to pay Borders on Thursday or Friday. (HX60A, 60B)

82. Judge Hastings embarked on his planned itinerary on October 7. He spoke at Albany State Teachers College in Albany, Georgia, on October 8. The judge called Borders to inform him of the flight he would be taking to Washington the following day. In that conversation, he reported that he had been unable to get a room at the L'Enfant Plaza and had booked a room at the Washington Hilton. Borders indicated that he would pick the judge up at the airport and would arrange to get him in at the L'Enfant Plaza. (HX61A,

61B)

83. The FBI confirmed their arrangements for the payoff and arrest on October 8. Surveillance teams were assigned to watch Borders and Judge Hastings on October 9. Room 103 at the Twin Bridges Marriott in Arlington, Virginia, was equipped with audio and video equipment so the payoff and arrest could be recorded. Agents Amoroso and Murphy flew to Washington with Rico/Romano and the $125,000 in cash. (RX22)

84. That evening, Gerald McDowell, chief of the Public Integrity Section, called Atlee Wampler, the United States Attorney for the Southern District of Florida, to advise him of the status of the investigation and of the plans for the payoff and arrest on the following day. Martin R. Raskin, the Assistant United States Attorney in charge of the criminal division in Miami, was present during this call and participated in the discussion. He reported that both he and Mr. Wampler vigorously opposed the decision to arrest Borders at the scene of the payoff and argued strongly that Borders should be permitted to take the money so that Judge Hastings's guilt or innocence might be conclusively established. Mr. McDowell informed that the decision to make the arrest and seek Borders's cooperation had been made and was final. Based upon their experience as prosecutors, Mr. Raskin testified that both he and [Mr. Wampler] believed that this decision did not satisfy proper prosecutorial or investigative standards. (3008-11, 3015, 3018-19)

85. Judge Hastings arrived at Washington National Airport at 10:40 a.m. Borders met him and they drove to the L'Enfant Plaza. They arrived at 10:50 a.m. They checked in at 11:00 a.m., and the judge sent a suit to be pressed. He and Borders stopped at Hemphill Pride's room. Pride was there with his wife, Shirley, and their son, Elliot. Pride was changing clothes and invited the judge to accompany the Prides on a shopping trip. The judge declined. The judge indicated he needed to have a bag repaired, and Borders offered to take him to a luggage store. (3180-85)

86. Judge Hastings left the hotel with Borders. Borders made two stops and then drove to his office. After returning some telephone calls, Borders told the judge that he had to go out on business. The judge asked Borders to direct him to a shopping area where he might find a luggage store. Borders did, and the judge left Borders's office and walked to Nikki Youngs, a dress shop owned by Brenda Russell, a friend. The judge stopped at a luggage shop, purchased a bag and returned to the hotel. He ordered lunch from his room at 1:00 p.m. (3185-91; HX130)

87. The judge has consistently testified that, upon his return to his room, he made two local calls and a long-distance call to his chambers from his room at the L'Enfant Plaza, in which he learned that Barbara Whiting had called. Barbara Katzen confirmed that he had called his chambers from the hotel. Barbara Whiting remembered she had called the judge's chambers and remembered receiving a call from

him to confirm he had received the message. Carolyn Lewis, another organizer of the dinner-cruise, confirmed that she had received a call from the judge while he was at the hotel. In the ordinary course of the L'Enfant Plaza Hotel's business, all of these calls should have been reflected on the judge's bill and the long-distance call should have been reflected in other records. The hotel records did not reflect these calls. (3196-97; PT Lewis, *Hastings* 1396-98; PT Whiting, id. 1208, Katzen, id. 1366)

88. Rico/Romano called Borders's office at 11:08 a.m. on October 9 from the Twin Bridges Marriott and left the number at which Borders could reach him. Borders returned the call from his office at 11:46 a.m. Rico/Romano told Borders where he was, and Borders said he would be there in an hour. (HX62A, 62B, 64A, 64B)

89. According to the FBI arrest log, Borders arrived at the Twin Bridges Marriott at 12:37 p.m. He asked Rico/Romano to get the money and accompany him for a ride. Borders was arrested as he pulled out of the parking lot and taken back to Room 103. Borders remained in Room 103 from 12:55 p.m. until 1:56 p.m. At 1:07 p.m. Borders signed a waiver of rights form. At 1:18 p.m. Borders called his attorney, John Shorter. Shorter arrived at the hotel at 1:31 p.m. Over the next 25 minutes, Borders and Shorter had three private conversations lasting approximately 10 minutes in all. (HX65A, 65B, 66)

90. The FBI did not use the video or audio equipment

to record what occurred in Room 103 during the hour following Borders's arrest. Agents Murphy and Amoroso reported only that they initially confronted Borders with the evidence against him and that, ultimately, Borders decided not to cooperate. His initial and subsequent reactions to the arrest and confrontation during this period were not recorded or reported in any detail. (715-18, 720-27, 1344-49, 2417, 2426-32, 2441-53)

91. Immediately after the arrest, the FBI in Miami dispatched ten to twelve special agents to Judge Hastings's chambers to interview his law clerks and serve a subpoena calling for the production of his records. Accounts of how the agents comported themselves differ, but certain facts are not in dispute. The secretary to whom the subpoena was addressed was not present in the judge's chambers. Agents in fact entered Judge Hastings's office and gathered such records and materials as they thought covered by the subpoena and took them from the office. (1430-1431) While the agents were in the judge's chambers, a reporter from the Miami Herald arrived and asked to examine the Romano file.

92. A further team of FBI agents was dispatched to interview Patricia Williams, an attorney at Equal Employment Opportunities Commission and a close friend of Judge Hastings, at her office. During that interview, Ms. Williams excused herself to take a call. This occurred somewhere around 3:00 p.m. (1351-57)

93. Teams of agents were also dispatched in Washington

to serve subpoenas on Borders's law office and to look for Judge Hastings. The agents apparently had not observed his departure before noon and believed that he was still at Borders's office. Agent Murphy spoke with John Shorter by telephone from Borders's office and told him he wanted to locate and interview Judge Hastings. He asked Shorter to inform Judge Hastings if he spoke with him. (613-16)

94. Pride had joined Judge Hastings in his room while the judge was eating, and the judge ordered food for him also. After they had eaten, the two men went to a lounge in the hotel for drinks. Some time between 2:00 and 3:00 p.m., they returned to their respective rooms. When Pride returned to his room, he received a call from John Shorter. Shorter told him that Borders had been arrested and the charges had something to do with bribery in Judge Hastings's courtroom. Shorter also told Pride that Agent Murphy wanted to talk to the judge and gave him the name of a Washington lawyer who would assist the judge, if asked. (1195-1200, 3190-92)

95. Pride called Judge Hastings and asked him to come to Pride's room. The judge met Pride and his son as he got off the elevator on their floor. Pride reported his conversation with Shorter to the judge. By all accounts the judge was stunned. He asked Pride to repeat the story. Pride did. Pride also advised the judge to return to Ft. Lauderdale and consult with lawyers he knew because he could defend himself on his "home turf." The judge acknowledged he

was shocked by Pride's report. (1200-05, 3192-94) The accounts of what transpired next differ in significant detail.

96. According to the judge, he returned to his room and made two telephone calls -- one to his mother and the other to Patricia Williams, the attorney at the Equal Employment Opportunities Commission who was a close friend. According to Pride, he accompanied the judge to his room and did not see him make any calls before he began packing. The judge's recollection of these events was confirmed by Shirley Pride, who testified that her husband had returned to the room with their son and had remained for a period before leaving to go to the judge's room, and by Mildred Hastings, the judge's mother, who recalled receiving the call. (1202-03, 1205, 2838-39, 3194-96; PT M. Pride, *Hastings* 788-89)

97. The hotel also had no record of these calls. There was, however, a 76 minute interval from 2:54 p.m. to 4:10 p.m. during which the hotel records reflected no long-distance calls from any room in the L'Enfant Plaza Hotel. The billing records maintained by the telephone company to verify the accuracy of customer records and the hotel's long-distance records for other days in this period were destroyed within three years of the event, and thus there is no basis for verifying the accuracy of the records that remain. (1494-1498, 1504-1505, 1527-28; HX140)

98. According to the judge, concern for his invalid

mother as well as Pride's advice influenced his decision to go home. Both men agreed that Pride had been present while the judge packed and had accompanied the judge to the lobby. Pride offered to drive the judge to the airport. The judge declined and said Pride should remain with his family. (1205, 3195, 3199-3201)

99. The judge did not check out of the hotel. He reported that he understood that the room had been taken care of and that he gave Pride money to pay for the incidental charges and his suit and asked him to give the suit to one of the dinner-guests from Florida and ask him to bring it back when he returned. Pride did not recall receiving the money or the request. (1206)

100. The judge left the hotel and took a taxi to Baltimore Washington Airport. The fare was $50. The judge has consistently testified that he thought that there was a direct flight from BWI to Ft. Lauderdale departing at 5:00 p.m. and that there were no direct flights departing from National Airport at this time. National Airport was significantly closer, and there was in fact a direct flight to Miami scheduled to depart at 4:30 p.m. (3195, 3199-3202)

101. At 4:37 and again at 4:43 p.m., the judge called his home from a pay phone at the airport and spoke with his mother. From 5:06 through 5:24 p.m., Judge Hastings initiated a series of four telephone calls with Patricia Williams that culminated in a pay phone-to-pay phone conversation at 5:24 p.m. The judge has consistently testified that this

sequence was intended to assure that his conversation with Ms. Williams was not overheard. (3418-20; S186-191)

102. Judge Hastings caught a 6:30 flight from BWI and arrived in Ft. Lauderdale at approximately 8:38 p.m. The judge rented a car. According to the judge, he drove first to his home to assure that his mother was alright. Alvoyd Merritt, the judge's uncle, was at the house to assist Mrs. Hastings. The judge went to Ms. Williams's house. Shortly after he arrived, Special Agents Lawrence Harrigan and John Simmons came to the door. Judge Hastings invited them in and agreed to talk with them. (1374-76, 3202; PT Merritt, *Hastings* 816-18)

103. Judge Hastings invited the agents to record the conversation. Agent Simmons reported that they were not equipped to do so and testified that as a matter of FBI policy such interviews are not recorded. By all accounts, Judge Hastings spoke freely with the agents for more than two hours. The agents' recollection of the information obtained in that interview and two subsequent telephone conversations was compressed into a three-page memorandum. (1396, 1427, 1452, 3202)

APPENDIX B

STATEMENT CONCERNING UNAVAILABLE WITNESSES AND RECORDS AND THEIR RELEVANCE

Respondent submits this statement to identify (I) the witnesses who have died or become unavailable; (II) the records that had been destroyed and their importance to the case; and (III) the reasons why the failure to preserve the necessary testimony and records cannot be charged to respondent.

I. WITNESSES

The witnesses can be divided into two categories -- (A) those with information directly relevant to the conspiracy allegations and (B) those with information indirectly relevant to that accusation or directly relevant to other issues in the case.

A. Conspiracy Witness

Prior to September 10, 1981, there were at least eight people with some knowledge of Borders's and Dredge's activities -- Joseph Nesline, Thomas Romano, Frank Romano, Santo Trafficante, Phillip Moscato, Willie Dara, William Borders, and William Dredge. Six of these had died or become unavailable before trial. Borders refused to testify. Thus, William Dredge remained the only witness available. The relevant information concerning the six is as follows:

1. Joseph Nesline. All of the available evidence indicates that Nesline was a central figure in this case. He dealt with Borders from at least April 1981 and remained in contact with Borders after he went to prison. He brought Borders and Dredge together. He reportedly brought Trafficante

and Borders together. Nesline eventually concluded that Borders's claim to have control over Judge Hastings was false and that Borders had, in fact, been engaged in a scam. (142-43, 2880-2909, 2913-39)

Mr. Nesline was adjudicated competent to plead guilty in 1986. His competency was sufficient in 1985 to merit a major undercover investigation by the FBI. (2880-2909) He was called before the Investigating Committee in 1988 [IX IC 66-80 (Nesline)], but no effort was made to compel his testimony at that time. He was not called to testify or for deposition during the House inquiry in 1987 or 1988. Based upon the material supplied by his counsel, the parties stipulated that Mr. Nesline was mentally incompetent to testify at the time of the hearings in this case.

2. Frank Romano; and

3. Thomas Romano. According to hearsay accounts, the Romanos admitted that there were at least three separate discussions concerning approaches about their case. [See, e.g., II IC 126 - 45 (Sonnett); XXIII IC 284 - 93 (Sonnett).] At a minimum, their testimony would have confirmed that the accounts Dredge has given are false. Moreover, through them, the sources from whom Nesline and/or Dredge did or might have gained access to information about their case could have been identified. [See, e.g., II IC 139-41 (identifying Mattie Ayela as a Philadelphia underworld figure with whom they dealt).] Frank Romano died early in 1985. Thomas Romano died sometime thereafter. Both were apparently willing to testify

and cooperate had they been called prior to their deaths. (II IC 146-49 (Sonnett)]

4. Santos Trafficante. According to Dredge, Nesline was arranging meetings between Borders and Trafficante. According to the FBI, Borders was twice-observed talking with Trafficante. No one has testified concerning the content of any conversation that may have taken place. Trafficante could have testified concerning his relationships and dealings with Nesline, Dredge, and Borders. Mr. Trafficante was still alive in April 1986. [XXII IC 215-16 (Gonzalez)]. He has since died. [527 (Rogers)]. Trial by indirection and innuendo was the result.

5. Phillip "Brother" Moscato. The hearsay account in the record suggest that Moscato may have had at least three discussions with the Romanos (see ¶3 above). The accounts of Moscato's remarks suggest that there may have been more than one scheme to extract money. Moscato refused to testify generally when he appeared before the Investigating Committee in October 1985 (XX IC 139-40). No effort was made to compel further testimony. He did testify concerning an alleged meeting between Willie Dara, another man, and himself in 1981 (XX IC 146-49). His report of that conversation conflicts with the hearsay account provided by Mr. Sonnett and with the account provided by Dredge. Moscato is alive but the committee accepted the House's submission concerning his present incapacity (388) as sufficiently establishing his unavailability to justify the admission of Mr. Sonnett's hearsay account.

6. *Willie Dara*. Dredge identified Dara as his original source of information about the Romanos. (145, 147, 149-50) Dara was present at a meeting with Moscato and saw him frequently. Dara is reportedly dead. [149; XX IC 146-49 (Moscato)]

B. Other Witnesses

7. *Andrew Mavrides*. Mr. Mavrides was one of Judge Hastings's principal attorneys from the outset of the case in 1981. (3253-54) He continued to play that role until his emotional breakdown in 1982. (3285-87, 3289-91, 3294-98) He remained alive through August 1985 [XVI IC (Mavrides)]. He has since died (3349).

8. *Alvoyd Merritt*. Mr. Merritt testified at the judge 1983 trial. His testimony has endured (PT Merritt, *Hastings*); he has not (3349).

9. *Sylvester Goodson*. Hemphill Pride told Mr. Goodson that the judge had in fact given him $100 to pay the judge's incidentals and collect his suit. (3410-11) This occurred when Pride's recollection was fresh. Mr. Goodson is dead. (3349).

The problems resulting from delay are not confined to the death and unavailability of witnesses. Of equal significance is the differential decline in recollections and its impact. Witnesses, such as the FBI agents, had records of their activities from which to perfect their recollections and rehearse their accounts (*e.g.*, Murphy and Amoroso). Other witnesses could refresh their recollections concerning matters addressed in 1983 or in 1985 from prior testimony to the extent possible (e.g., Sonnett and Miller). Others were interviewed, but not called at the 1983 trial, and were first called to state their recollections in a suggestive environment more than four years after the event (e.g., the Dabreau sisters and Ms. Myrill-Mendez). The danger here is that recollections will be reconstructed carefully and selectively in light of other testimony and the records that have been preserved (e.g., Dredge).

II. RECORDS

The missing records fall into two categories -- (A) Pattern of Contacts Records and (B) Other Records.

A. Patterns of Contacts

The House claims to discern a pattern in the contacts shown by telephone and travel records that is consistent with its theory that a conspiracy was established early in 1981 and continued thereafter. The records necessary to determine and what theories they might support are missing.

1. C & P Telephone Company. Records for the first half of 1981 were not sought until 1985. By that time they had been destroyed. [II IC 49-51 (Greene)] As a result, the following records were not and could not be obtained:

a. Borders. The records for Borders's home and office telephones for the period January 1 through May 7, 1981. These records would be necessary to establish a more complete indication of the contacts between Borders and Pride and Borders and Judge Hastings. In the absence of these records it is impossible to confirm whether any calls from the judge to Borders may have been in response to a call from Borders or whether Borders responded to any of the calls evidenced by a message slip in Borders's office telephone logs or by calls of one minute or less. These records would also reflect the absence (or presence) of calls from Borders to Dredge and to Pride.

b. Nesline. There are no long-distance billing records for Nesline's telephone during the period January through October 1981. It is thus impossible to determine the contacts Nesline may have had with Dredge, Trafficante, and others from whom he may have obtained information.

c. Madeline Petty. The evidence suggests that Borders visited Ms. Petty's house and the House relies upon evidence of calls made to her house by Dredge and the judge. The absence of records of calls made from her phone deprives us of a further source.

2. Hemphill Pride. Hemphill Pride was released from prison in March 1981. He has acknowledged that he was in regular telephone contact with both Judge Hastings and Borders throughout the period from his release until October 9, 1981 (1165, 1239). Information specifying the timing and duration of these calls would be essential to assessing the credibility of the pattern the House claims to see and of the explanations the judge has provided. The judge sought these records before his trial in 1983, but was not able to obtain them (3318, 3320). The testimony received by the Investigating Committee shows that records for 1981 were not available in 1985 [e.g., XV IC 48 (Roof)]. Ultimately, the Investigating Committee had

to rely upon subscriber information records and old telephone directories to verify 1981 listings for various numbers [XV IC 34-49 (Roof); XIX IC 101-02 (Bridgeman)].

3. Airline Records. Air Florida was one of the principal carriers between South Florida and the Washington, D.C., area in 1981. The House postulates trips by Mr. Dredge, among others, for which there is no documentation. Any attempt to reconstruct the travels of Dredge, Trafficante, Borders, and Judge Hastings would have required access to those records as well. Air Florida went into bankruptcy, and its records were no longer available by 1985.[1]

B. Other Records

The principal records identified in this category are the reservation and telephone billing records from the L'Enfant Plaza Hotel and from the AT&T/C&P Telephone Companies Hotel Billing Information System.

1. Loewe's L'Enfant Plaza. The L'Enfant Plaza was apparently filled to something approaching capacity on Friday, October 9, 1981. (3178-79; HX 61A, 61B) The HOBIS records reflect no long-distance calls from any room in the hotel during the 76 minute period from 2:54 to 4:10 p.m. on that date (HX 140). The L'Enfant Plaza Hotel has a three year record retention policy (1527-28), indicating that records necessary to test the accuracy of those admitted might have been produced through the end of 1984. Insofar as the record reflects, the

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[1] The record does contain information concerning Air Florida flights where the tickets included flights on other airlines. See, *e.g.*, PT Washington, XXVII IC 175, 179-80, 192-95; *cf*. HX 38-40.

records were never sought. They have never been produced.

2. AT&T/C&P Telephone. The HOBIS system was implemented in 1981. A major component of that system was designed to store electronically and in hard copy records of all long distance calls made from hotels that used the system. The purpose of these records was to make it possible to detect and correct discrepancies between the records generated at the hotels and those recorded by the telephone companies. The error rate must have been sufficient to justify the use of this component. The records necessary to verify the HOBIS printout for October 9, 1981, or to verify the reliability of the system at the hotel during the relevant period have been destroyed (1482, 1485-98, 1504-05).

3. Other Records. Judge Hastings recalls that there was a meeting of the leadership of the NBA and its Judicial Council in May 1981 (3090-92). There is corroboration in Borders's telephone message slips. (RX 31A, 32A). The NBA was able to produce no direct confirmation. Matters such as these could have been fairly exposed at a time when recollections were fresher and records were current.

III. NOTICE AND OPPORTUNITY AVAILABLE TO THE RESPONDENT

The 1981 indictment alleged a conspiracy that began on or about September 10. 1981 and ended on or about October 9, 1981. Notwithstanding the judge's efforts, the Justice Department attorneys avoided producing Dredge. The Trafficante matter was kept out of that case. The judge prepared accordingly. The Investigating Committee filed its report and record with the Judicial Council of the Eleventh Circuit in August 1986. Judge Hastings and his counsel were first afforded limited access at that time.

Prior to August 1986, neither Judge Hastings nor his counsel had any notice that the judge might face accusations concerning the first half of 1981. They had no forum in which witness or records necessary to prepare a defense could be subpoenaed until the matter was referred to the House in March 1987. The judge sought a role for his counsel in shaping that investigation. He was rebuffed. He was rebuffed again at the House subcommittee hearings in May and June 1988.[2]

It is also clear that the long delay is not attributable to respondent. The Investigating Committee proceeded with its hearings while the judge's constitutional challenge to its authority was pending.[3] The Investigating Committee was still gathering testimony and records when the judge's law clerks were ordered to testify.[4] The House proceeded in the face of the litigation over the grand jury records, and there is no indication that that litigation delayed its work in any significant way.

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[2] The procedural history is recounted with supporting notes and documentation *Impeachment Inquiry, Appendix III* at 5-16, 31-48.

[3] The Investigating Committee initiated its hearings in May 1985, promptly after it had completed such preliminary investigations as it thought necessary. *Impeachment Inquiry, Appendix I* at 5-9. Judge Hastings's initial challenge to the constitutionality of statute under which the committee was operating was not decided until August 1985. *See Hastings v. Judicial Conference of the United States,* 770 F.2d 1093 (D.C. Cir. 1985).

[4] The decision ordering them to testify was issued in February 1986 and became final when the Supreme Court denied review in 1986. *In re Certain Complaints Under Investigation by an Investigating Committee of the Judicial Council of the Eleventh Circuit,* 783 F.2d 1488 (11th Cir.), cert. denied 106 S.Ct. 3273 (1986). The committee held three more hearings at which testimony and documents in addition to the testimony of the witnesses involved in that litigation were received. See XXVI IC (July 8, 1986), XXVII IC (July 9, 1986), and XXVII IC

Respectfully submitted,

Terence J. Anderson

Principal Counsel to
United States District Judge Alcee L. Hastings

(Aug. 4 & 6, 1986).

COURT ORDERS RE: WILLIAM A. BORDERS, JR.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMPEACHMENT TRIAL COMMITTEE
ON THE ARTICLES AGAINST
JUDGE ALCEE L. HASTINGS,
Applicant,

FILED
AUG 17 1989
Clerk, U.S. District Court
District of Columbia

v.

Misc. No. 89-129

WILLIAM A. BORDERS, JR.,
Respondent.

ORDER

Having considered the Senate Impeachment Trial Committee's application to enforce its subpoena of respondent William A. Borders Jr., as well as Mr. Borders' opposition to the application, the Court finds that the Committee is entitled to enforce its subpoena and to receive Mr. Borders' testimony.

Therefore, it is ORDERED that Mr. Borders shall appear before the Impeachment Trial Committee at times to be designated by the Committee and shall respond forthwith to the questions propounded by the Committee and the parties, and shall testify fully and completely regarding his knowledge of all events relevant to the Senate's trial of the articles of impeachment against Judge Hastings.

It is FURTHER ORDERED that if Mr. Borders fails to appear before the Committee or fails to answer the questions propounded to him, he shall appear forthwith before the Court to show cause why he should not be held in contempt of this Court and why civil sanctions should not be imposed to compel obedience to this Court's Order.

8/17/89

DATE

GEORGE H. REVERCOMB
U.S. DISTRICT JUDGE

Michael Davidson
Ken U. Benjamin
Morgan J. Frankel
642 Hart Senate Office Bldg.
Washington, D.C. 20510

Michael S. Rosier
1420 K St., N.W.
Suite 711
Washington, D.C. 20005

Marvin Arrington
First Atlanta Tower
22nd Floor
Two Peachtree Street, N.E.
Atlanta, Georgia 33083

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
AUG 22 1989
Clerk, U.S. District Court
District of Columbia

IMPEACHMENT TRIAL COMMITTEE)
ON THE ARTICLES AGAINST)
JUDGE ALCEE L. HASTINGS,)
Applicant,)
v.) Misc. No. 89-129 (LFO)
WILLIAM A. BORDERS, JR.,)
Respondent.)

ORDER

William A. Borders, Jr., having been ordered by this Court on August 17, 1989, (1) to appear before the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings and to testify fully regarding his knowledge of all events relevant to the Senate's trial of the articles of impeachment against Judge Hastings, and (2) if he fails to testify, to appear forthwith before this Court to show cause why he should not be held in contempt of this Court and why civil sanctions should not be imposed to compel obedience to this Court's order, it is, on consideration of the motion of the Committee for an order adjudging Mr. Borders in civil contempt and imposing sanctions to compel obedience for having refused, at a hearing of the Committee on August 22, 1989, to obey this Court's order to testify, and Mr. Borders' response in open Court, this 22nd day of August, 1989, ORDERED that William A. Borders, Jr., is adjudged to be in civil contempt of this Court's order of August 17, 1989, for refusing to answer the Committee's and parties' questions about his knowledge of events relevant to the Senate's trial of the articles of impeachment against Judge Hastings, and

It is FURTHER ORDERED that William A. Borders, Jr., is committed, pursuant to 28 U.S.C. § 1365 (Supp. V 1987), to the custody of the United States Marshal to be confined in a suitable place until he will comply fully with this Court's order of August 17, 1989, or until the Senate takes final action on the articles of impeachment Against Judge Alcee L. Hastings, whichever occurs first, and

It is FURTHER ORDERED, ~~at the~~ request of Mr. Borders and with the consent of the Committee, that execution of this order of commitment be deferred until 10:a.m., August 25, 1989, and that Mr. Borders is directed to surrender himself by that time to the United States Marshal pursuant to directions that shall be given to him by the Marshal, and that the Marshal is directed to assume custody of Mr. Borders pursuant to this order on August 25, 1989.

United States District Judge

United States District Court
for the District of Columbia
A TRUE COPY
JAMES F. DAVEY, Clerk

By
Deputy Clerk

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

PROFFER ON BEHALF OF THE HOUSE OF REPRESENTATIVES IN CONNECTION WITH THE TESTIMONY OF MAYOR STEPHEN CLARK

The House of Representatives recognizes that the Senate Committee has ruled that no evidence concerning the polygraph test administered to Mayor Clark by the FBI should be offered in evidence. The House, of course, will abide by the ruling. We wish to make the following proffer so that the record is clear what the testimony would have been and the limited purpose for which it is offered.

If asked, Mayor Clark would have testified that after his initial interview by the FBI he was asked to take a polygraph test. He agreed to do so and, in fact, took the test. Among the questions asked was, "Are you lying when you say Judge Hastings told you to stay away from Kevin Gordon?" Mayor Clark responded that he was not lying and the examiner concluded there was no evidence of deception.

The House offers this evidence, not to prove the veracity of Mayor Clark's testimony, but rather to show the investigative steps taken by the FBI in this matter. Obviously, if Mayor Clark had failed the polygraph test, the FBI would have proceeded differently then if he had passed it.

This evidence is highly relevant for this limited purpose because a central aspect of Respondent's defense is that the wiretap leak case against Respondent is part of an FBI plot to "get Hastings" and that the investigation was conducted in a manner to implicate the Judge, rather than to find the real source of the leak.

If the Respondent persists in this argument, we believe the issue of the admissability of the polygraph evidence should be reconsidered. In this connection, we cite the case of United States v. Hall, 805 F.2d 1410 (10th Cir. 1986) where polygraph evidence was admitted for this limited purpose, in a criminal case.

Respectfully submitted,

The United States
House of Representatives

By Alan I. Baron
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant

Hamilton Fish, Jr.
George W. Gekas

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

July 21, 1989

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

MOTION TO STRIKE A "PROFFER" BY THE HOUSE OF REPRESENTATIVES IN CONNECTION WITH THE TESTIMONY OF MAYOR STEPHEN CLARK

The Senate Impeachment Trial Committee unanimously decided that evidence relating to the polygraph examination administered to Stephen Clark by the FBI should not be presented or considered. The House Managers have sought to evade that ruling by presenting a "proffer" to the committee that presents and misrepresents the excluded evidence. Respondent moves that the "proffer" be striken from the record.

Apart from the sheer arrogance of this gesture, the "proffer" should be striken from the record for four reasons. First, the Committee should not permit the Managers to so simply evade a clear directive. Second, the "proffer" mischaracterizes the polygraph examiner's opinion of a lie detector test allegedly given to the witness Clark in March 1986. The "proffer" states that the examiner concluded that "there was no evidence of deception" (emphasis supplied). The summary report of the examiner states only that, "It is the opinion of the examiner, that the recorded responses...are not indicative of deception." (House Exhibit 192 at p.2; emphasis supplied.) That is a far cry from the proffered claim.

Third, the "proffer" is not based upon a proper report of a polygragh examination. During the House Impeachment Inquiry, Judge Hastings submitted the views of an independent expert in the field. Those views raised serious questions about the methodology used in conducting the purported examination and identified the documentation that would have to be presented in order to assess whether the examination satisfied the standards recognized by trained examiners throughout the nation.[1] The House has been unable or unwilling to produce the documentation necessary for such a review. This defect would suffice to require exclusion, even in the absence of the Committee directive.

Finally, the Managers reliance on United States v. Hall, 805 F.2d 1410 (10th Cir. 1986), is as disingenuous as the "proffer" itself. In Hall, the court restated the well-settled proposition that polygraph examinations are not admissible to show that a witness is truthful or untruthful. (Id. at 1416; emphasis added; citations omitted.)

In Hall, the testimony concerned two polygraph examinations that the accused had taken. Hall, a night teller of a bank, was accused of robbing the bank in which he worked. On the night of robbery, Hall was working alone. He was found locked in the vault. There were no other witnesses. Hall claimed that the robber had locked him in the vault, and agreed to take two polygragh examinations. The examinations yielded negative or inconclusive results. After the detective confronted Hall with the results of these two polygraph tests, Hall confessed that he had initially given the detective a false description of the alleged bank robber. At that point, Hall provided her with a new description. Five months later, two bank bags filled with money were discovered under a panel which covered a crawl space located in the employee's restroom.

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[1] See Impeachment Inquiry, Appendix III at 290-292.

At trial, Hall claimed that the detective should have pursued alternative lines of inquiry. There were no apparent alternative lines, and the detective's testimony about the polygraph examinations was admitted in rebuttal to demonstrate her knowledge, as it related to her judgment regarding the scope of the investigation. The detective's testimony was admitted solely to show her state of mind. In Hall, the court of appeals affirmed the admission of the testimony regarding the polygraph examination solely for that limited purpose.

The polygraph examination proffered here was performed on someone other than the accused. It was performed on the principle witness against the accused. The results were allegedly "positive".[2] That fact does not, however, bear upon the question of whether the FBI should have pursued its inquiries. There were over eight hundred people present at the meeting at which the alleged disclosure took place. There is direct evidence that the story which Clark told could not be true. According to Clark's story, the alleged disclosure would have taken place after 9:30 a.m. The call that Clark said this disclosure allegedly provoked was at 8:58 a.m. Clark told a story that could not have been true. The Managers contend they had corroborating evidence of the source of the leak through Kevin "Waxy" Gordon. Given the questionable credibility of Gordon, and in light of the fact that this investigation involved a United States District Judge, circumstances make it painfully clear that there were alternative lines of inquiry that could have and should have been pursued.

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[2] The actual wording of the report creates the inference that the result was positive. See House Exhibit 192, at 2.

Judge Hastings intends to expose the essential flaws in that investigation. It is incredible, however, for the Managers to suggest that Clark's polygraph examination would serve as a basis to rebut that contention in light of all of the other circumstances. The "proffer" is intended to serve only one purpose-- to corroborate the testimony of a witness against the accused. The submission of the "proffer" for that purpose was in direct contravention of the law and the ruling of this Committee and should be striken.

Respectfully submitted,

Patricia Graham Williams
Miami, Florida

Terence Anderson
Coral Gables, Florida

Robert S. Catz
Cleveland, Ohio